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Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

International Criminal Court Bill 2001

No. , 2001

(Attorney-General)

**A Bill for an Act to facilitate compliance by
Australia with obligations under the Rome Statute
of the International Criminal Court, and for
related purposes**

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EXPOSURE DRAFT

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**A Bill for an Act to facilitate compliance by
Australia with obligations under the Rome Statute
of the International Criminal Court, and for
related purposes**

12

The Parliament of Australia enacts:

13
14

Part 1—Preliminary

15

^1 Short title

16
17

This Act may be cited as the *International Criminal Court Act
2001*.

18

^2 Commencement

19
20
21
22
23
24

- (1) This Part commences on the day on which this Act receives the Royal Assent.
- (2) Subject to subsections (3) and (4), the remaining Parts of this Act commence on a day to be fixed by Proclamation.
- (3) The day to be fixed under subsection (2) must be not earlier than the day on which the Statute enters into force for Australia.

Section ^3

1 (4) If the remaining Parts of this Act do not commence under
2 subsection (2) within the period of 1 month beginning on the day
3 on which the Statute enters into force for Australia, they
4 commence on the first day after the end of that period.

5 (5) In this section:

6 *Statute* has the meaning given by paragraph (a) of the definition of
7 that expression in section ^4.

8 **^3 Complementarity of jurisdictions**

9 (1) It is the Parliament's intention that the jurisdiction of the ICC is to
10 be complementary to the jurisdiction of Australia.

11 (2) Accordingly, this Act does not affect the primary right of Australia
12 to exercise its jurisdiction with respect to crimes within the
13 jurisdiction of the ICC.

14 **^4 Definitions**

15 In this Act, unless the contrary intention appears:

16 *appropriate authority*, in relation to an authorisation given by the
17 Attorney-General for the purposes of compliance with a request by
18 the ICC for assistance of a particular type, means:

19 (a) an officer of the Commonwealth authorised by the
20 Attorney-General; or

21 (b) an officer of a State authorised under an agreement in force
22 under section ^175;

23 to act in connection with the provision of the assistance.

24 *appropriate court* means the Federal Court or the Supreme Court
25 of a State.

26 *appropriate Ministerial consent* to the service by an ICC prisoner
27 in Australia of a sentence of imprisonment imposed by the ICC
28 means consent to the sentence being served in Australia given by:

29 (a) the Attorney-General; and

- 1 (b) if the prisoner is not an Australian citizen—the Minister for
2 Immigration and Multicultural Affairs; and
3 (c) the State Minister of the State in which the prisoner is to
4 begin to serve the sentence.

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

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

9 **authenticated by the ICC** means authenticated by the ICC under
10 the Statute or the Rules.

11 **conduct** means:

- 12 (a) an act; or
13 (b) an omission to perform an act.

14 **crime within the jurisdiction of the ICC** means:

- 15 (a) an international crime; or
16 (b) an offence against the administration of the ICC's justice.

17 **DPP** means the Director of Public Prosecutions.

18 **enforcement conditions** has the meaning given by subsection
19 ¹⁵⁰(1).

20 **escort officer**, in relation to an ICC prisoner, means the police
21 officer, prison officer or other person specified in the warrant
22 authorising the transfer of the ICC prisoner under Part 12 as the
23 escort officer for the ICC prisoner.

24 **evidence** includes expert evidence.

25 **evidential material** means a thing relevant to a crime within the
26 jurisdiction of the ICC, including such a thing in electronic form.

27 **examination** of a site that is a grave includes exhumation of the
28 grave.

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

Section 4

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

10 ***faxed copy***, in relation to a document, means a copy of a document
11 obtained or sent by fax.

12 ***Federal Court*** means the Federal Court of Australia.

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

- 14 (a) is being held in custody pending:
15 (i) trial for; or
16 (ii) a committal hearing or a summary hearing in relation to;
17 or
18 (iii) sentencing for;
19 an offence against a law of the Commonwealth or of a
20 Territory; or
21 (b) is under a sentence of imprisonment for an offence against a
22 law of the Commonwealth or of a Territory, or is otherwise
23 subject to detention under a law of the Commonwealth or of
24 a Territory;

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

27 ***forfeiture order*** means an order made by the ICC under paragraph
28 2(b) of article 77 of the Statute for the forfeiture of tainted
29 property.

30 ***frisk search*** means:

- 31 (a) a search of a person conducted by quickly running the hands
32 over the person's outer garments; and

1 (b) an examination of anything worn or carried by the person
2 that is conveniently and voluntarily removed by the person.

3 **ICC** means the International Criminal Court established under the
4 Statute, and includes any of the organs of that Court within the
5 meaning of the Statute.

6 **ICC prisoner** means a person who is to serve, or is serving, a
7 sentence of imprisonment imposed by the ICC.

8 **international crime** means a crime in respect of which the ICC has
9 jurisdiction under article 5 of the Statute.

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

16 **magistrate** means:

- 17 (a) a magistrate of a State in respect of which an arrangement
18 under section ^175 is in force; or
19 (b) a magistrate of a Territory.

20 **offence against the administration of the ICC's justice** means an
21 offence against the administration of the ICC's justice referred to
22 in article 70 of the Statute.

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

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

29 **Official Trustee** means the Official Trustee in Bankruptcy.

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

Section ^4

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

4 ***police officer*** means:

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

8 ***police station*** includes:

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

11 ***possession***, in relation to a thing, includes having the thing under
12 control in any place whatsoever, whether for the use or benefit of
13 the person of whom the term is used or of another person, and
14 although another person has the actual possession or custody of the
15 thing in question.

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

17 ***Pre-Trial Chamber*** means the Pre-Trial Chamber of the ICC.

18 ***prisoner***, except in the expression ***ICC prisoner***, means a federal
19 prisoner or a State prisoner.

20 ***prison officer*** means a person appointed or employed to assist in
21 the management of a prison.

22 ***proceeds*** of a crime within the jurisdiction of the ICC means any
23 property that is derived or realised, directly or indirectly, by any
24 person from the commission of the crime.

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

29 ***Prosecutor*** means the Prosecutor of the ICC.

- 1 **recently used conveyance**, in relation to a search of a person,
2 means a conveyance that the person had operated or occupied at
3 any time within 24 hours before the search commenced.
- 4 **request for arrest and surrender** of a person means a request made
5 to Australia by the ICC for the arrest and surrender of the person
6 and, if a request has previously been made by the ICC for the
7 provisional arrest of the person, includes a subsequent request
8 made by the ICC for the surrender of the person.
- 9 **request for cooperation** has the meaning given by section ⁸.
- 10 **request for provisional arrest** of a person means a request made to
11 Australia by the ICC for the provisional arrest of the person.
- 12 **request for surrender** of a person means a request made by the
13 ICC for the surrender of the person, whether in conjunction with a
14 request made by the ICC for the arrest of the person or subsequent
15 to a request made by the ICC for the provisional arrest of the
16 person.
- 17 **restraining order** means an order under subsection ⁸¹(2).
- 18 **Rules** means the Rules of Procedure and Evidence in force under
19 article 51 of the Statute.
- 20 **search warrant** means a warrant issued under section ¹⁰⁴.
- 21 **seizable item** means anything that would present a danger to a
22 person or could be used to assist a person to escape from lawful
23 custody.
- 24 **serve** a sentence imposed by the ICC includes complete the service
25 of such a sentence that has been partly served.
- 26 **State** includes the Australian Capital Territory, the Northern
27 Territory and Norfolk Island.
- 28 **State Minister** means:
29 (a) in relation to a particular State other than the Australian
30 Capital Territory, the Northern Territory or Norfolk Island—

Section ^4

- 1 the Minister of the State administering the law of the State
2 relating to the transfer of prisoners; and
3 (b) in relation to the Australian Capital Territory—the Minister
4 for the Australian Capital Territory administering the law of
5 the Australian Capital Territory relating to the transfer of
6 prisoners; and
7 (c) in relation to the Northern Territory—the Minister for the
8 Northern Territory administering the law of the Northern
9 Territory relating to the transfer of prisoners; and
10 (d) in relation to Norfolk Island—the executive member (within
11 the meaning of the *Norfolk Island Act 1979*) administering
12 the law of Norfolk Island relating to the transfer of prisoners;
13 and includes any Minister or executive member acting for the time
14 being for or on behalf of the Minister or executive member referred
15 to in any of the above paragraphs and any person to whom the
16 Minister or executive member so referred to has delegated any of
17 the Minister's or executive member's functions under this Act.

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

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

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

30 **Statute** means the Statute of the International Criminal Court done
31 at Rome on 17 July 1998, a copy of the English text of which is set
32 out in Schedule 1.

Section ^5

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

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

- 6 (a) requiring the person to remove all of his or her garments; and
7 (b) an examination of the person's body (but not of the person's
8 body cavities) and of those garments.

9 *superintendent* of a prison means the person for the time being in
10 charge of the prison.

11 *surrender* of a person means surrender of the person to the ICC.

12 *surrender warrant* means a warrant issued under section ^28.

13 *tainted property*, in relation to a crime within the jurisdiction of the
14 ICC, means proceeds of the crime.

15 *Territory* does not include the Australian Capital Territory or the
16 Northern Territory and, except in section ^6, does not include
17 Norfolk Island.

18 *Trial Chamber* means the Trial Chamber of the ICC.

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

^5 Act to bind Crown

22 This Act binds the Crown in right of the Commonwealth and in
23 right of each of the States.

^6 External Territories

25 This Act extends to each external Territory.

Section ^7

1 **^7 Application of Criminal Code**

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

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

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Part 2—General provisions relating to requests by the ICC for cooperation

^8 What constitutes a request for cooperation

- (1) A *request for cooperation* is a request made by the ICC to Australia, in respect of an investigation or prosecution that the Prosecutor is conducting or proposing to conduct, for:
- (a) assistance in connection with any one or more of the following:
 - (i) the arrest (including the provisional arrest), and surrender to the ICC, of a person in relation to whom the ICC has issued a warrant of arrest or a judgment of conviction;
 - (ii) the identification and whereabouts of a person or the location of items;
 - (iii) the taking of evidence, including testimony on oath, and the production of evidence, including expert opinions and reports necessary to the ICC;
 - (iv) the questioning of any person being investigated or prosecuted;
 - (v) the service of documents, including judicial documents;
 - (vi) facilitating the voluntary appearance of persons (other than prisoners) before the ICC;
 - (vii) the temporary transfer of prisoners to the ICC;
 - (viii) the examination of places or sites;
 - (ix) the execution of searches and seizures;
 - (x) the provision of records and documents, including official records and documents;
 - (xi) the protection of victims or witnesses or the preservation of evidence;
 - (xii) the identification, tracing, and freezing or seizure, of tainted property in relation to crimes within the

Section ^9

- 1 jurisdiction of the ICC for the purpose of eventual
2 forfeiture, without prejudice to the rights of bona fide
3 third parties; and
4 (b) any other type of assistance that is not prohibited by
5 Australian law, with a view to facilitating the investigation
6 and prosecution of crimes within the jurisdiction of the ICC
7 and the enforcement of orders of the ICC made after
8 convictions for such crimes.
- 9 (2) This Act does not prevent the provision of assistance to the ICC
10 otherwise than under this Act, including assistance of an informal
11 nature.

^9 How requests for cooperation are to be made

- 12 (1) Subject to section ^10, a request for cooperation:
13 (a) is to be made in writing to the Attorney-General through the
14 diplomatic channel; or
15 (b) is to be sent through the International Criminal Police
16 Organisation or any other appropriate regional organisation.
- 17
18 (2) If a request for cooperation is sent to, or received by, a person to
19 whom the Attorney-General has delegated a power to deal with the
20 request, the request is taken for the purposes of this Act to have
21 been sent to, or received by, the Attorney-General.

**^10 Urgent requests for cooperation and requests for provisional
arrest**

- 22 (1) A request for cooperation made in urgent cases, and any request for
23 provisional arrest, may be made by using any medium capable of
24 delivering a written record.
- 25
26 (2) If a request is made or sent in the first instance in a manner
27 specified in subsection (1), it must be followed as soon as
28 practicable by a formal request made in accordance with section
29 ^9.
30

1 **^11 Execution of requests**

- 2 (1) A request for cooperation must be executed in accordance with the
3 relevant procedure under the applicable Australian law (as
4 provided in this Act).
- 5 (2) If the request states that it should be executed in a particular
6 manner that is not prohibited by Australian law or by using a
7 particular procedure that is not prohibited by Australian law, the
8 Attorney-General must use his or her best efforts to ensure that the
9 request is executed in that manner or by using that procedure, as
10 the case may be.
- 11 (3) This section does not affect the operation of subsection **^99(1)**
12 (which allows the Prosecutor in certain circumstances to execute a
13 request for cooperation to which Part 4 applies) or section **^100**
14 (which allows the Prosecutor in certain circumstances to conduct
15 investigations in Australia).

16 **^12 Consultations with ICC**

- 17 (1) The Attorney-General must consult with the ICC, without delay, if,
18 for any reason, there are or may be problems with the execution of
19 a request for cooperation.
- 20 (2) Before refusing a request for assistance of a kind mentioned in
21 paragraph 1(l) of article 93 of the Statute, the Attorney-General
22 must consult with the ICC to ascertain whether the assistance
23 requested could be provided:
24 (a) subject to conditions; or
25 (b) at a later date or in an alternative manner.
- 26 (3) Without limiting the types of conditions under which assistance
27 may be provided, the Attorney-General may agree to information
28 or documents being sent to the Prosecutor on a confidential basis,
29 on the condition that the Prosecutor will use them solely for the
30 purpose of generating new evidence.
- 31 (4) If the Attorney-General sends information or documents subject to
32 the condition specified in subsection (3), the Attorney-General may
-

Section ^13

1 subsequently consent to the disclosure of the documents or
2 information for use as evidence under the provisions of Parts 5 and
3 6 of the Statute and in accordance with the Rules.

4 **^13 Request that may raise problems relating to Australia's**
5 **international obligations to a foreign country**

- 6 (1) This section applies where the Attorney-General consults with the
7 ICC because the execution of a request for cooperation may raise
8 problems relating to Australia's obligations to a foreign country
9 under international law or international agreements as mentioned in
10 article 98 of the Statute.
- 11 (2) If, after the consultation, the Attorney-General is satisfied that the
12 execution of the request would not conflict with any of those
13 obligations, the Attorney-General must sign a certificate stating
14 that the execution of the request does not conflict with any of those
15 obligations.
- 16 (3) A certificate signed under subsection (2) is conclusive evidence of
17 the matters stated in the certificate.
- 18 (4) If, after the consultation, the Attorney-General is not satisfied as
19 mentioned in subsection (2), the Attorney-General must postpone
20 the execution of the request unless and until the foreign country
21 has made the necessary waiver or given the necessary consent.

22 **^14 Confidentiality of request**

- 23 (1) A person dealing with a request for cooperation must keep the
24 request, and any documents supporting it, confidential except to
25 the extent that it is necessary to disclose the request or such a
26 document for the purpose of executing the request.
- 27 (2) If the ICC requests that particular information made available in
28 connection with a request for cooperation be provided and handled
29 in a manner that protects the safety, or physical or psychological
30 well-being, of any victims, potential witnesses and their families, a

1 person dealing with the request must ensure that the information is
2 provided and handled in that manner.

3 **^15 Response to be sent to ICC**

4 (1) The Attorney-General must notify the ICC, without undue delay,
5 of his or her response to a request for cooperation and of the
6 outcome of any action that has been taken in relation to the request.

7 (2) If the Attorney-General decides, in accordance with the Statute and
8 this Act, to refuse or postpone the assistance requested, wholly or
9 partly, the notice to the ICC must set out the reasons for the
10 decision.

11 (3) If the request for cooperation cannot be executed for any other
12 reason, the notice to the ICC must set out the reasons for the
13 inability or failure to execute the request.

14 (4) In the case of an urgent request for cooperation, any documents or
15 evidence produced in response must, if the ICC requests, be sent
16 urgently to it.

17 (5) Documents or evidence provided or produced in response to a
18 request for cooperation must be sent to the ICC in the original
19 language and form.

20 **^16 Attorney-General must take into account ICC's ability to refer
21 matter to Assembly of States Parties or Security Council**

22 In determining what action to take in relation to a request for
23 cooperation, the Attorney-General must take into account the
24 power of the ICC to refer the matter to the Assembly of States
25 Parties or to the Security Council in accordance with paragraph 7
26 of article 87 of the Statute if the ICC finds that, contrary to the
27 provisions of the Statute, Australia has failed to comply with the
28 request.

Part 3 Requests by the ICC for arrest and surrender of persons

Division 1 Preliminary

Section ¹⁷

1

2 **Part 3—Requests by the ICC for arrest and**
3 **surrender of persons**

4 **Division 1—Preliminary**

5 ¹⁷ **Application of Part**

6 This Part applies to a request for arrest and surrender, or a request
7 for provisional arrest, of a person.

1

2 **Division 2—Documentation to accompany request**

3 **^18 Documentation for request for arrest and surrender of person**
4 **for whom warrant of arrest has been issued**

5 If a request is made for arrest and surrender of a person for whom a
6 warrant of arrest has been issued by the Pre-Trial Chamber under
7 article 58 of the Statute, the request must contain or be supported
8 by:

- 9 (a) information describing the person sought, being information
10 sufficient to identify the person; and
11 (b) information as to the person's probable location; and
12 (c) a copy of the warrant of arrest, authenticated by the ICC; and
13 (d) any other documents, statements or information required by
14 or under the regulations.

15 **^19 Documentation for request for arrest and surrender of person**
16 **already convicted**

17 If a request is made for arrest and surrender of a person who has
18 already been convicted, the request must contain or be supported
19 by:

- 20 (a) a copy of any warrant of arrest for the person, authenticated
21 by the ICC; and
22 (b) a copy of the judgment of conviction, authenticated by the
23 ICC; and
24 (c) information to demonstrate that the person sought is the
25 person referred to in the judgment of conviction; and
26 (d) if the person sought has been sentenced:
27 (i) a copy of the sentence imposed, authenticated by the
28 ICC; and
29 (ii) in the case of a sentence of imprisonment—a statement
30 of any period already served and the period remaining
31 to be served.

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1 **^20 Documentation for request for provisional arrest**

2 If a request is made for provisional arrest of a person, the request
3 must contain or be supported by:

- 4 (a) information describing the person sought, being information
5 sufficient to identify the person; and
6 (b) information as to the person's probable location; and
7 (c) a concise statement of:
8 (i) the crimes within the jurisdiction of the ICC for which
9 the person's arrest is requested; and
10 (ii) the facts that are alleged to constitute those crimes,
11 including, where possible, the dates when, and the
12 locations at which, the crimes are alleged to have been
13 committed; and
14 (d) a statement of the existence of a warrant of arrest, or of a
15 judgment of conviction, against the person sought; and
16 (e) a statement that a request for surrender of the person will
17 follow.

1

2 **Division 3—Arrest of persons**

3 **^21 Arrest following request for arrest and surrender**

- 4 (1) If:
- 5 (a) the Attorney-General receives a request for arrest and
- 6 surrender of a person; and
- 7 (b) Division 2 has been complied with in respect of the request;
- 8 the Attorney-General must, by written notice in the statutory form
- 9 expressed to be directed to any magistrate, state that the request has
- 10 been received.
- 11 (2) A copy of any warrant of arrest or judgment of conviction that was
- 12 issued by the ICC must be attached to the notice.
- 13 (3) A magistrate must issue a warrant, by writing in the statutory form,
- 14 for the person's arrest if an application is made, in the statutory
- 15 form, on behalf of the ICC, for issue of a warrant pursuant to the
- 16 notice.
- 17 (4) After the warrant has been issued, the magistrate must without
- 18 delay send to the Attorney-General a report stating that the
- 19 magistrate has issued the warrant.

20 **^22 Arrest following request for provisional arrest**

- 21 (1) If:
- 22 (a) the Attorney-General receives a request for provisional arrest
- 23 of a person; and
- 24 (b) Division 2 has been complied with in respect of the request;
- 25 the Attorney-General must, by written notice in the statutory form
- 26 expressed to be directed to any magistrate, state that the request has
- 27 been received.
- 28 (2) A magistrate must issue a warrant, by writing in the statutory form,
- 29 for the person's arrest if an application is made, in the statutory

Part 3 Requests by the ICC for arrest and surrender of persons

Division 3 Arrest of persons

Section ^23

1 form, on behalf of the ICC, for issue of a warrant pursuant to the
2 notice.

3 (3) After the warrant has been issued, the magistrate must without
4 delay send to the Attorney-General a report stating that the
5 magistrate has issued the warrant.

6 **^23 Remand**

7 (1) If a person is arrested under a warrant issued under section ^21 or
8 ^22, the person executing the warrant must, as soon as practicable
9 after the arrest:

10 (a) give to the person under arrest a written notice that:

11 (i) specifies the crime within the jurisdiction of the ICC in
12 respect of which the warrant was issued; and

13 (ii) describes the conduct that is alleged to constitute that
14 crime; and

15 (b) bring the person under arrest before a magistrate in the State
16 or Territory in which the arrest took place.

17 (2) The magistrate must satisfy himself or herself whether:

18 (a) the person is the person specified in the warrant; and

19 (b) the person was arrested in accordance with this Act; and

20 (c) section ^124 has been complied with in respect of the arrest.

21 (3) If the magistrate is not satisfied as to any one or more of the
22 matters mentioned in subsection (2), the magistrate must order the
23 release of the person from custody. However, the making of the
24 order does not prevent the person from being arrested under a
25 further warrant issued under section ^21 or ^22.

26 (4) If the magistrate is satisfied as to all the matters mentioned in
27 subsection (2), the magistrate must remand the person in custody
28 or on bail for such period or periods as may be necessary to enable
29 the Attorney-General to issue a surrender warrant and, if a
30 surrender warrant is issued, to enable the warrant to be executed.

31 (5) The magistrate must remand the person in custody unless there are
32 special circumstances justifying remand on bail.

- 1 (6) Without limiting the other matters that may be taken into account
2 in making a decision to grant bail, the magistrate must have regard
3 to the following:
4 (a) the gravity of the alleged crimes within the jurisdiction of the
5 ICC;
6 (b) whether there are urgent and exceptional circumstances that
7 favour the grant of bail;
8 (c) whether necessary safeguards exist to ensure that Australia
9 can fulfil its duty under the Statute to surrender the person.
- 10 (7) Without limiting the other matters that may be taken into account
11 in making a decision to grant bail, the magistrate may not consider
12 whether any warrant of arrest issued by the ICC was properly
13 issued in accordance with the Statute.

14 **[^]24 Procedure following application for bail**

- 15 (1) If an application for bail is made, the Attorney-General must notify
16 the ICC.
- 17 (2) The Attorney-General must give to the magistrate who is
18 considering the application the recommendations made by the ICC
19 in relation to the application.
- 20 (3) Before giving a decision, the magistrate must consider the
21 recommendations that the ICC has made, including any
22 recommendations or measures to prevent the escape of the person.
- 23 (4) If the person is granted bail, the Attorney-General must, if the ICC
24 requests, provide periodic reports to the ICC on the person's bail
25 status.
- 26 (5) This section applies with any necessary modifications to any
27 application for bail made during the period until the person is
28 surrendered or is released according to law.

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1 **^25 Release from remand on the Attorney-General's direction**

2 (1) The Attorney-General must, by written notice in the statutory form,
3 direct a magistrate to order the release from custody of a person
4 remanded under this Division, or the discharge of the
5 recognisances on which bail was granted to the person, as the case
6 requires, if:

7 (a) where the person was remanded following the receipt of a
8 request for provisional arrest—a request for surrender of the
9 person has not been duly received within 60 days after the
10 day on which the person was arrested and the person does not
11 consent to surrender; or

12 (b) in any case—after considering the matters mentioned in
13 subsection ^23(6), the Attorney-General considers for any
14 other reason that the remand should cease.

15 (2) The making by a magistrate of an order under subsection (1)
16 following a direction by the Attorney-General does not prevent the
17 person from being arrested and remanded pursuant to a further
18 request for arrest and surrender of the person received after the
19 making of the order.

20 **^26 Release from remand after certain periods**

21 (1) A person must be brought before a magistrate if:

22 (a) the person was arrested under a warrant issued under
23 subsection ^22(2); and

24 (b) the person is, under this Division, on remand 60 days after
25 the day on which the person was arrested; and

26 (c) a notice has not been given under subsection ^21(1) in
27 relation to the person.

28 (2) Unless the magistrate is satisfied that such a notice is likely to be
29 given within a particular period that is reasonable in all the
30 circumstances, the magistrate must:

31 (a) order the release of the person from custody; or

32 (b) order the discharge of the recognisances on which bail was
33 granted to the person;

- 1 as the case requires.
- 2 (3) If a magistrate was satisfied under subsection (2) that such a notice
3 was likely to be given in relation to the person within a particular
4 period but the notice is not given within the period:
- 5 (a) the person must be brought before a magistrate; and
6 (b) the magistrate must:
- 7 (i) order the release of the person from custody; or
8 (ii) order the discharge of the recognisances on which bail
9 was granted to the person;
- 10 as the case requires.

11 **^27 Application for search warrants**

- 12 (1) If:
- 13 (a) a person is arrested under a warrant issued under section **^21**
14 or **^22**; and
- 15 (b) a police officer has reasonable grounds for suspecting that
16 evidential material relating to a crime within the jurisdiction
17 of the ICC in respect of which the warrant was issued is, or
18 within the applicable period referred to in subsection (3) of
19 this section will be, at any premises;
- 20 the police officer may, by an information on oath that sets out the
21 grounds for the suspicion, apply for a search warrant in relation to
22 the premises to search for that material.
- 23 (2) If:
- 24 (a) a person is arrested under a warrant issued under section **^21**
25 or **^22**; and
- 26 (b) a police officer has reasonable grounds for suspecting that
27 evidential material relating to a crime within the jurisdiction
28 of the ICC in respect of which the warrant was issued is, or
29 within the applicable period referred to in subsection (3) of
30 this section will be, in a person's possession;
- 31 the police officer may, by an information on oath that sets out the
32 grounds for the suspicion, apply for a search warrant in relation to
33 the person to search for the material.

Part 3 Requests by the ICC for arrest and surrender of persons

Division 3 Arrest of persons

Section ^27

- 1 (3) For the purposes of this section, the *applicable period* is:
- 2 (a) if the application for the warrant is made by telephone, telex,
- 3 fax or other electronic means, as provided by section ^109—
- 4 48 hours; or
- 5 (b) otherwise—72 hours.
- 6 Note: Part 6 deals with search warrants.

1

2 **Division 4—Surrender of persons**

3 **^28 Surrender warrants**

4 (1) Except where this Division otherwise provides, if a person is
5 remanded under Division 3, the Attorney-General must issue a
6 warrant for the surrender of the person.

7 (2) The surrender warrant must be in writing in the statutory form.

8 **^29 Surrender warrant may take effect at later date**

9 (1) This section applies if, apart from this subsection, the
10 Attorney-General would be required to issue a surrender warrant
11 for a crime within the jurisdiction of the ICC in respect of a person
12 who is liable to be detained in a prison because of a sentence of
13 imprisonment imposed for a different offence against Australian
14 law.

15 (2) The Attorney-General may, after consultation with the ICC, do
16 either of the following:

17 (a) instead of issuing a surrender warrant that has an immediate
18 effect, issue a surrender warrant that is to come into effect
19 when the person ceases to be liable to be detained;

20 (b) issue a surrender warrant that has a temporary operation in
21 accordance with conditions agreed with the ICC.

22 **^30 Refusal of surrender**

23 (1) The Attorney-General must refuse a request for surrender of a
24 person if the ICC determines that the case is inadmissible and
25 subsection ^32(4), ^34(3) or ^35(3) applies.

26 (2) The Attorney-General may refuse a request for surrender of a
27 person if:

28 (a) there are competing requests from the ICC, and from a
29 foreign country that is not a party to the Statute, relating to
30 the same conduct, and subsection ^38(6) applies; or

Part 3 Requests by the ICC for arrest and surrender of persons

Division 4 Surrender of persons

Section ^31

- 1 (b) there are competing requests from the ICC, and from a
2 foreign country that is not a party to the Statute, relating to
3 different conduct, and subsection ^39(3) applies.
- 4 (3) To avoid doubt:
- 5 (a) the only grounds on which surrender of a person may be
6 refused are those specified in this section; and
- 7 (b) the restrictions on extradition specified in the *Extradition Act*
8 *1988* do not apply in relation to a request for surrender of a
9 person.

10 **^31 Postponement of execution of request for surrender**

- 11 (1) The Attorney-General may postpone the execution of a request for
12 surrender of a person for a crime within the jurisdiction of the ICC
13 at any time before the person is surrendered if, and only if:
- 14 (a) a determination on admissibility of the kind specified in
15 section ^32, ^34 or ^35 is pending before the ICC; or
- 16 (b) the request would interfere with an ongoing investigation or
17 prosecution in Australia involving different conduct from the
18 conduct that constituted the crime, as provided in section
19 ^33; or
- 20 (c) the request involves a conflict with Australia's international
21 obligations, and subsection ^13(4) applies.
- 22 (2) If the Attorney-General postpones the execution of the request, the
23 postponement may be for a reasonable period and may, if the
24 Attorney-General considers it desirable, be extended from time to
25 time.
- 26 (3) A decision by the Attorney-General to postpone the execution of a
27 request:
- 28 (a) does not limit or affect the detention of a person under a
29 warrant issued under this Part; and
- 30 (b) does not affect the validity of any act done or any warrant
31 issued under this Part before the decision was made.
- 32 (4) However, if:

- 1 (a) the person applies to an appropriate court to be released; and
2 (b) the court is satisfied that reasonable notice of the intention to
3 make the application has been given to the Attorney-General;
4 the court may, unless the person is liable to be detained under any
5 other order or other sufficient cause is shown against the release,
6 order the release of the person from the place where the person is
7 detained.

8 **[^]32 Previous proceedings against person sought**

- 9 (1) This section applies if the person whose surrender is sought alleges
10 to the Attorney-General that:
11 (a) the case is one to which paragraph 1 of article 20 of the
12 Statute applies (because it relates to conduct that formed the
13 basis of crimes for which the person has been convicted or
14 acquitted by the ICC); or
15 (b) the person has been tried by another court for conduct also
16 proscribed under article 6, 7 or 8 of the Statute and the case is
17 not one to which paragraph 3(a) or (b) of article 20 of the
18 Statute applies.
- 19 (2) The Attorney-General must immediately consult with the ICC to
20 determine if there has been a relevant determination on
21 admissibility under the Statute.
- 22 (3) If the ICC has determined that the case is admissible, surrender
23 cannot be refused on the ground of the person's previous
24 conviction, acquittal or trial in respect of the relevant conduct.
- 25 (4) If the ICC has determined that the case is inadmissible under
26 article 20 of the Statute, surrender must be refused on the ground
27 of the person's previous conviction, acquittal or trial, as the case
28 may be, in respect of the relevant conduct.
- 29 (5) If an admissibility determination is pending, the Attorney-General
30 may postpone the execution of a request until the ICC has made its
31 determination.

1 **^33 Ongoing Australian investigation or prosecution involving**
2 **different conduct**

- 3 (1) This section applies if a request for surrender of a person is made
4 that would interfere with an ongoing investigation or prosecution
5 in Australia involving different conduct from the conduct
6 constituting the crime within the jurisdiction of the ICC to which
7 the request relates.
- 8 (2) The Attorney-General may, after consultation with the ICC:
9 (a) proceed with the execution of the request despite the
10 Australian investigation or prosecution; or
11 (b) postpone the execution of the request until the Australian
12 investigation or prosecution has been finally disposed of.
- 13 (3) Nothing in this section limits or affects section ^29 (which allows
14 the Attorney-General to issue a surrender warrant that comes into
15 effect at a later date if a person is serving a sentence for a different
16 offence against Australian law).

17 **^34 Person being investigated or prosecuted in Australia for same**
18 **conduct**

- 19 (1) This section applies if:
20 (a) a request for surrender of a person is made; and
21 (b) the request relates to conduct that would constitute an
22 offence under Australian law; and
23 (c) either:
24 (i) the conduct is being investigated or prosecuted in
25 Australia; or
26 (ii) the conduct has been investigated in Australia, and a
27 decision was made not to prosecute the person sought;
28 and
29 (d) a challenge to the admissibility of the case is being or has
30 been made to the ICC under paragraph 2(b) of article 19 of
31 the Statute.

- 1 (2) The Attorney-General may postpone the execution of the request
2 for surrender until the ICC has made its determination on
3 admissibility.
- 4 (3) If the ICC determines that the case is inadmissible, surrender must
5 be refused.
- 6 (4) If the ICC determines that the case is admissible and there is no
7 other ground for refusing or postponing the request, the request
8 must continue to be dealt with under this Part.

9 **[^]35 Challenges to admissibility in other cases**

- 10 (1) This section applies if the ICC is considering an admissibility
11 challenge under article 18 or 19 of the Statute, other than a
12 challenge of the kind referred to in section [^]32 or [^]34.
- 13 (2) The Attorney-General may, pending a determination by the ICC on
14 the admissibility challenge, postpone the execution of a request
15 under this Part in respect of the crime within the jurisdiction of the
16 ICC to which the challenge relates.
- 17 (3) If the ICC determines that the case to which the request relates is
18 inadmissible, surrender must be refused.
- 19 (4) If the ICC determines that the case to which the request relates is
20 admissible, and there is no other ground for refusing or postponing
21 the request, the request must continue to be dealt with under this
22 Part.

23 **[^]36 Request from ICC and a foreign country relating to same**
24 **conduct**

25 If a request for surrender of a person is made and a foreign country
26 requests the extradition of the person for the conduct that forms the
27 basis of the crime for which the person's surrender is sought, the
28 Attorney-General:

- 29 (a) must notify the ICC and the foreign country of that fact; and

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- 1 (b) must determine, in accordance with section ^37 or ^38
2 whether the person is to be surrendered or is to be extradited
3 to the foreign country.

4 **^37 Procedure where competing request relating to same conduct**
5 **from a foreign country that is a party to the Statute**

- 6 (1) This section applies if:
7 (a) section ^36 applies; and
8 (b) the foreign country is a party to the Statute.
- 9 (2) Priority must be given to the request from the ICC if:
10 (a) the ICC has, under article 18 or 19 of the Statute, made a
11 determination that the case in respect of which surrender is
12 sought is admissible and that determination takes into
13 account the investigation or prosecution conducted by the
14 foreign country in respect of its request for extradition; or
15 (b) the ICC makes such a determination after receiving
16 notification of the request for extradition from the foreign
17 country.
- 18 (3) If the ICC has not made a determination referred to in
19 subsection (2), then, pending the making of such a determination:
20 (a) the steps required to be taken under the *Extradition Act 1988*
21 in relation to a request for extradition may continue to be
22 taken; but
23 (b) no person may be extradited under that Act pursuant to the
24 request unless and until the ICC makes its determination on
25 admissibility and determines that the case is inadmissible.
- 26 (4) Paragraph (3)(b) does not apply if the ICC does not make its
27 determination on an expedited basis.

28 **^38 Procedure where competing request relating to same conduct**
29 **from a foreign country that is not a party to the Statute**

- 30 (1) This section applies if:
31 (a) section ^36 applies; and
-

- 1 (b) the foreign country is not a party to the Statute.
- 2 (2) Priority must be given to the request for surrender if:
- 3 (a) Australia is not under an international obligation to extradite
- 4 the person to the foreign country; and
- 5 (b) the ICC has determined under article 18 or 19 of the Statute
- 6 that the case is admissible.
- 7 (3) The request for extradition by the foreign country may continue to
- 8 be dealt with if:
- 9 (a) Australia is not under an international obligation to extradite
- 10 the person to the foreign country; and
- 11 (b) the ICC has not yet determined under article 18 or 19 of the
- 12 Statute that the case is admissible.
- 13 (4) Despite subsection (3), no person may be extradited under the
- 14 *Extradition Act 1988* pursuant to the request for extradition unless
- 15 and until the ICC makes its determination on admissibility and
- 16 determines that the case is inadmissible.
- 17 (5) Subsection (4) does not apply if the ICC does not make its
- 18 determination on an expedited basis.
- 19 (6) If Australia is under an international obligation to extradite the
- 20 person to the foreign country, the Attorney-General must
- 21 determine whether to surrender the person or to extradite the
- 22 person to the foreign country.
- 23 (7) In making the determination under subsection (6), the
- 24 Attorney-General must consider all relevant matters, including, but
- 25 not limited to:
- 26 (a) the respective dates of the requests; and
- 27 (b) the interests of the foreign country, including, if relevant,
- 28 whether the crime was committed in its territory and the
- 29 nationality of the victims and of the person sought; and
- 30 (c) the possibility of subsequent surrender between the ICC and
- 31 the foreign country.

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1 **^39 Request from ICC and foreign country relating to different**
2 **conduct**

3 (1) If a request for surrender of a person is made and a foreign country
4 requests the extradition of the person for conduct other than the
5 conduct that forms the basis of the crime for which the person's
6 surrender is sought, the Attorney-General must determine whether
7 the person is to be surrendered or is to be extradited to the foreign
8 country.

9 (2) If Australia is not under an international obligation to extradite the
10 person to the foreign country, priority must be given to the request
11 from the ICC.

12 (3) If Australia is under an international obligation to extradite the
13 person to the foreign country, the Attorney-General must
14 determine whether to surrender the person or to extradite the
15 person to the foreign country.

16 (4) In making the determination under subsection (3), the
17 Attorney-General must consider all relevant matters, including, but
18 not limited to, the matters specified in subsection ^38(7), but must
19 give special consideration to the relative nature and gravity of the
20 conduct for which surrender and extradition are sought.

21 **^40 Notification of decision on extradition to foreign country**

22 (1) If, following notification under article 90 of the Statute, the ICC
23 has determined that a case is inadmissible and the
24 Attorney-General subsequently refuses to extradite the person to
25 the foreign country under the *Extradition Act 1988*, the
26 Attorney-General must notify the ICC of the refusal.

27 (2) The obligation in this section is in addition to the requirement of
28 section ^15 for the Attorney-General to respond formally to the
29 request from the ICC.

1 [^]41 **Detention following surrender warrants**

- 2 (1) If the Attorney-General issues a surrender warrant in relation to a
3 person who is on bail, the person must be brought as soon as
4 practicable before a magistrate in the State or Territory in which
5 the person is on remand.
- 6 (2) The magistrate must remand the person in custody for such period
7 or periods as may be necessary to enable the warrant to be
8 executed.

9 [^]42 **Content of surrender warrants**

- 10 (1) A surrender warrant in relation to the person (the *relevant person*)
11 must:
- 12 (a) require the person in whose custody the relevant person is
13 being held to release the relevant person into the custody of a
14 police officer; and
- 15 (b) authorise the police officer to transport the relevant person in
16 custody, and, if necessary or convenient, to detain the
17 relevant person in custody, for the purpose of enabling the
18 relevant person:
- 19 (i) to be placed in the custody of a specified person who is
20 an officer of the ICC or other person authorised by the
21 ICC; and
- 22 (ii) to be transported to a place specified by the ICC; and
- 23 (c) authorise the specified person to transport the relevant person
24 in custody to a place specified by the ICC for the purpose of
25 surrendering the relevant person to a person appointed by the
26 ICC to receive the person.
- 27 (2) A place referred to in paragraph (1)(b) or (c) may be a place in or
28 outside Australia.

29 [^]43 **Execution of surrender warrants**

30 Subject to this Division, a surrender warrant must be executed
31 according to its terms.

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1 **^44 Release from remand**

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

22 **^45 Effect of surrender to ICC on person's terms of imprisonment**

- 23 (1) If, at the time when a person was surrendered in connection with a
- 24 crime within the jurisdiction of the ICC, the person was serving a
- 25 sentence of imprisonment in respect of an offence against a law of
- 26 the Commonwealth or of a Territory, or was otherwise subject to
- 27 detention under a law of the Commonwealth or of a Territory:
- 28 (a) any period spent by the person in custody in connection with
- 29 the surrender warrant; and
- 30 (b) subject to subsection (2), any period spent by the person in
- 31 custody in connection with detention by, or on the order of,
- 32 the ICC in respect of the crime;

1 are to be counted as periods served towards the sentence of
2 imprisonment or period of detention.

3 (2) If the person is convicted of the crime within the jurisdiction of the
4 ICC, the period spent by the person in custody serving a sentence
5 of imprisonment imposed by the ICC for the crime is not to be
6 counted as a period towards the sentence of imprisonment or
7 period of detention referred to in subsection (1).

8 (3) A reference in this section to a period spent in custody includes a
9 reference to a period spent in custody outside Australia.

10 **^46 Expiry of Australian sentences while under ICC detention**

11 If:

- 12 (a) at the time when a person was surrendered, the person was
13 serving a sentence of imprisonment in respect of an offence
14 against an Australian law, or was otherwise subject to
15 detention under an Australian law; and
16 (b) each such sentence of imprisonment that the person was
17 serving, or each such period of detention to which the person
18 was subject, at that time expires while the person is being
19 detained by, or on the order of, the ICC;

20 the Attorney-General must without delay inform the ICC of the
21 expiry.

22 **^47 Waiver of rule of speciality**

23 (1) If the ICC requests Australia under paragraph 2 of article 101 of
24 the Statute to waive the requirements of paragraph 1 of that article
25 in respect of a person surrendered by Australia, the
26 Attorney-General may waive the requirements accordingly.

27 (2) Before deciding whether to waive the requirements, the
28 Attorney-General may request the ICC to provide additional
29 information in accordance with article 91 of the Statute.

Part 4 Other requests by ICC

Division 1 Preliminary

Section ^48

1

2 **Part 4—Other requests by ICC**

3 **Division 1—Preliminary**

4 **^48 Application of Part**

5 This Part applies to a request for cooperation other than a request
6 for arrest and surrender, or a request for provisional arrest, of a
7 person.

1

2 **Division 2—Documentation to accompany request**

3 **^49 Documentation for request**

4 (1) A request for cooperation (other than a request to which
5 subsection (2) applies) must, as applicable, contain or be supported
6 by:

- 7 (a) a concise statement of the purpose of the request and the
8 assistance requested, including the legal basis and the
9 grounds for the request; and
10 (b) as much detailed information as possible about the location
11 or identification of any person or place that must be found or
12 identified in order that the assistance requested can be
13 provided; and
14 (c) a concise statement of the essential facts underlying the
15 request; and
16 (d) the reasons for, and details of, any procedure or requirement
17 to be followed; and
18 (e) any other information required under the regulations to
19 enable the request to be executed; and
20 (f) any other relevant information that is necessary to enable the
21 assistance to be provided.

22 (2) A request for transit under paragraph 3 of article 89 of the Statute
23 must contain, or be accompanied by, the following information and
24 documents:

- 25 (a) a description of the person to be transported;
26 (b) a brief statement of the facts of the case and their legal
27 characterisation; and
28 (c) a copy of the warrant for arrest and surrender.

Section ^50

1

2 **Division 3—Restrictions on provision of assistance**

3 **^50 Refusal of assistance**

- 4 (1) The Attorney-General must refuse a request for cooperation in
5 circumstances referred to in subsection ^135(4) (which relates to
6 third party information that cannot be disclosed).
- 7 (2) The Attorney-General may refuse a request for cooperation:
8 (a) in circumstances referred to in Part 8 (which relates to the
9 protection of national security interests); or
10 (b) if there are competing requests from the ICC, and from a
11 foreign country that is not a party to the Statute, relating to
12 the same conduct, and subsection ^58(4) applies; or
13 (c) if there are competing requests from the ICC, and from a
14 foreign country, relating to different conduct, and subsection
15 ^59(3) applies.
- 16 (3) To avoid doubt, the only grounds on which a request for
17 cooperation may be refused are those specified in this section.

18 **^51 Postponement of execution of request**

- 19 (1) The Attorney-General may postpone the execution of a request for
20 cooperation if, and only if:
21 (a) the execution of the request would interfere with an ongoing
22 investigation or prosecution in Australia involving different
23 conduct from the conduct to which the request relates, and
24 section ^53 applies; or
25 (b) a determination of admissibility is pending before the ICC,
26 and section ^54 applies; or
27 (c) there are competing requests from the ICC and from a
28 foreign country to which Australia is under an international
29 obligation, and paragraph ^55(2)(a) applies; or
30 (d) the request is for assistance under paragraph 1(l) of article 93
31 of the Statute, and subsection ^12(2) applies; or

1 (e) the request involves a conflict with Australia's international
2 obligations, and subsection **^13(4)** applies.

3 (2) Even if subsection (1) applies to a request for cooperation, the
4 Attorney-General may decide not to postpone the execution of the
5 request and, in that event, the request must be dealt with in
6 accordance with this Part.

7 (3) If the Attorney-General postpones the execution of the request for
8 cooperation, the postponement may be for a reasonable period and
9 may, if the Attorney-General considers it desirable, be extended
10 from time to time.

11 **^52 Procedure if assistance precluded under Australian law**

12 If:

- 13 (a) the execution of a particular measure of assistance specified
14 in a request for cooperation is prohibited in Australia; and
15 (b) the Attorney-General consults with the ICC in accordance
16 with subsection **^12(2)** in respect of the request; and
17 (c) the matter is not resolved but the ICC modifies the request so
18 that it can be dealt with under this Act;
19 the Attorney-General must deal with the request accordingly.

20 **^53 Postponement where ongoing Australian investigation or**
21 **prosecution would be interfered with**

22 (1) If the immediate execution of a request for cooperation would
23 interfere with an ongoing investigation or prosecution in Australia
24 involving different conduct from the conduct to which the request
25 relates, the Attorney-General may postpone the execution of the
26 request for a period agreed between the Attorney-General and the
27 ICC.

28 (2) Despite subsection **^51(3)**, the period of postponement may be no
29 longer than is reasonably necessary to complete the investigation
30 or prosecution.

Part 4 Other requests by ICC

Division 3 Restrictions on provision of assistance

Section ^54

- 1 (3) Before making a decision to postpone the execution of a request,
2 the Attorney-General must consider whether the assistance could
3 be provided immediately subject to conditions.
- 4 (4) If the Attorney-General decides to postpone the execution of a
5 request and the ICC requests assistance in the preservation of
6 evidence under paragraph 1(j) of article 93 of the Statute, the
7 Attorney-General must deal with the request in accordance with
8 this Part.

9 **^54 Postponement where admissibility challenge**

- 10 (1) This section applies if the ICC is considering an admissibility
11 challenge under article 18 or 19 of the Statute in respect of a case
12 to which a request for cooperation relates.
- 13 (2) If the ICC has not made an order under article 18 or 19 of the
14 Statute allowing the Prosecutor to collect evidence to which the
15 request relates, the Attorney-General may postpone the execution
16 of the request until the ICC has made its determination on
17 admissibility.
- 18 (3) If the ICC has made an order under article 18 or 19 of the Statute
19 allowing the Prosecutor to collect evidence to which the request
20 relates, the Attorney-General may not postpone the execution of
21 the request under this section but must deal with it under this Part.
- 22 (4) If the ICC determines that the case to which the request relates is
23 inadmissible, the request must be refused.
- 24 (5) If the ICC determines that the case to which the request relates is
25 admissible, and there is no other ground for refusing or postponing
26 the request, the request must continue to be dealt with under this
27 Part.

28 **^55 Competing requests**

- 29 (1) If a request for cooperation is made and a foreign country makes a
30 request for assistance to which Australia is under an international
31 obligation to respond, the Attorney-General must, after
-

1 consultation with the ICC and that country, try to comply with both
2 requests.

3 (2) For the purposes of subsection (1), the Attorney-General may do
4 either or both of the following:

5 (a) postpone the execution of either of the requests;

6 (b) attach conditions to the provision of assistance under either
7 or both of the requests.

8 (3) If it is not possible to resolve the issue by consultation, the method
9 of dealing with the requests must be resolved in accordance with
10 sections **^56** to **^60**.

11 **^56 Request from ICC and a foreign country relating to same**
12 **conduct**

13 If a request for cooperation is made and a foreign country requests
14 assistance from Australia in respect of a matter relating to the
15 conduct that forms the basis of the crime to which the request for
16 cooperation relates, the Attorney-General:

17 (a) must notify the ICC and the foreign country of that fact; and

18 (b) must determine, in accordance with section **^57** or **^58**
19 whether the request for cooperation or the request from the
20 foreign country is to be complied with.

21 **^57 Procedure where competing request relating to same conduct**
22 **from a foreign country that is a party to the Statute**

23 (1) This section applies if:

24 (a) section **^56** applies; and

25 (b) the foreign country is a party to the Statute.

26 (2) Priority must be given to the request for cooperation if:

27 (a) the ICC has, under article 18 or 19 of the Statute, made a
28 determination that the case is admissible and that
29 determination takes into account the investigation or
30 prosecution conducted by the foreign country; or

Part 4 Other requests by ICC

Division 3 Restrictions on provision of assistance

Section ^58

- 1 (b) the ICC makes such a determination after receiving
2 notification of the request from the foreign country.
- 3 (3) If the ICC has not made a determination referred to in
4 subsection (2), then, pending the making of such a determination:
5 (a) any preliminary steps required to be taken to give effect to
6 the request from the foreign country may continue to be
7 taken; but
8 (b) the request may not be complied with unless and until the
9 ICC makes its determination on admissibility and determines
10 that the case is inadmissible.
- 11 (4) Paragraph (3)(b) does not apply if the ICC does not make its
12 determination on an expedited basis.

13 **^58 Procedure where competing request relating to same conduct**
14 **from a foreign country that is not a party to the Statute**

- 15 (1) This section applies if:
16 (a) section ^56 applies; and
17 (b) the foreign country is not a party to the Statute.
- 18 (2) Priority must be given to the request for cooperation if:
19 (a) Australia is not under an international obligation to comply
20 with the request from the foreign country; and
21 (b) the ICC has determined under article 18 or 19 of the Statute
22 that the case is admissible.
- 23 (3) The request from the foreign country may continue to be dealt with
24 if:
25 (a) Australia is not under an international obligation to comply
26 with the request; and
27 (b) the ICC has not yet determined under article 18 or 19 of the
28 Statute that the case is admissible.
- 29 (4) If Australia is under an international obligation to comply with the
30 request from the foreign country, the Attorney-General must

- 1 determine whether the request for cooperation or the request from
2 the foreign country is to be complied with.
- 3 (5) In making a determination under subsection (4), the
4 Attorney-General must consider all relevant matters, including, but
5 not limited to:
- 6 (a) the respective dates of the requests; and
7 (b) the interests of the foreign country, including, if relevant,
8 whether the crime to which the request from that country
9 relates was committed in its territory and the nationality of
10 the victims and of the person who is alleged to have engaged
11 in the conduct forming the basis of that crime.

12 **^59 Request from ICC and foreign country relating to different**
13 **conduct**

- 14 (1) If a request for cooperation is made and a foreign country requests
15 assistance from Australia in respect of a matter relating to conduct
16 other than the conduct that forms the basis of the crime to which
17 the request for cooperation relates, the Attorney-General must
18 determine whether the request for cooperation or the request from
19 the foreign country is to be complied with.
- 20 (2) If Australia is not under an international obligation to comply with
21 the request from the foreign country, priority must be given to the
22 request for cooperation.
- 23 (3) If Australia is under an international obligation to comply with the
24 request from the foreign country, the Attorney-General must
25 determine whether the request for cooperation or the request from
26 the foreign country is to be complied with.
- 27 (4) In making a determination under subsection (3), the
28 Attorney-General must consider all relevant matters, including, but
29 not limited to, the matters specified in subsection ^58(5), but must
30 give special consideration to the relative seriousness of the
31 offences to which the requests relate.

Part 4 Other requests by ICC

Division 3 Restrictions on provision of assistance

Section ^60

1 **^60 Notification to ICC of decision refusing request by foreign**
2 **country**

3 (1) If, following notification under article 90 of the Statute, the ICC
4 has determined that a case is inadmissible and the
5 Attorney-General subsequently refuses the request from the foreign
6 country, the Attorney-General must notify the ICC of the refusal.

7 (2) The obligation in this section is in addition to the requirement of
8 section ^15 for the Attorney-General to respond formally to the
9 request for cooperation.

10 **^61 Requests involving competing international obligations**

11 If a request for cooperation relates to a person who, or information
12 or property that, is subject to the control of a foreign country or an
13 international organisation under an international agreement, the
14 Attorney-General must inform the ICC so as to enable it to direct
15 its request to the foreign country or international organisation.

1

2 **Division 4—Identifying or locating persons or things**

3 **[^]62 Assistance in identifying or locating persons or things**

4

(1) This section applies if:

5

(a) the ICC requests assistance in locating, or identifying and
6 locating, a person or thing; and

6

7

(b) the Attorney-General is satisfied that:

8

(i) the request relates to an investigation being conducted
9 by the Prosecutor or a proceeding before the ICC; and

9

10

(ii) the person or thing is or may be in Australia.

11

(2) The Attorney-General is to execute the request by authorising, in
12 writing, the making of inquiries for the purpose of locating, or
13 identifying and locating, the person or thing.

13

14

(3) If the Attorney-General authorises the making of such inquiries, an
15 appropriate authority is to locate, or identify and locate, the person
16 or thing.

16

17

(4) The authority is to notify the Attorney-General of the result of the
18 inquiries.

18

19

(5) This section does not give to any person a power to enter premises.

1

2 **Division 5—Taking evidence or producing documents or**
3 **articles**

4 **^63 Attorney-General may authorise taking of evidence or the**
5 **production of documents or articles**

6 (1) This section applies if:

7 (a) the ICC requests that:

8 (i) evidence be taken in Australia; or

9 (ii) documents or other articles in Australia be produced;
10 and

11 (b) the Attorney-General is satisfied that:

12 (i) the request relates to an investigation being conducted
13 by the Prosecutor or a proceeding before the ICC; and

14 (ii) there are reasonable grounds for believing that the
15 evidence can be taken, or the documents or other
16 articles can be produced, as the case may be, in
17 Australia.

18 (2) The Attorney-General is to execute the request by authorising, in
19 writing:

20 (a) the taking of evidence or production of documents or other
21 articles; and

22 (b) the sending of evidence, documents or other articles to the
23 ICC.

24 **^64 Taking of evidence**

25 (1) If the Attorney-General authorises the taking of evidence, a
26 magistrate:

27 (a) must give written notice to each person from whom evidence
28 is to be taken stating that the authorisation has been given
29 and setting out the date and time when, and the place where,
30 the evidence is to be taken; and

1 (b) may take the evidence on oath from each witness appearing
2 before the magistrate to give evidence in relation to the
3 matter.

4 (2) Evidence from a witness may be taken by means of video or audio
5 technology.

6 (3) A magistrate who takes any such evidence must:

- 7 (a) cause the evidence to be recorded in writing; and
8 (b) certify that the evidence was taken by the magistrate; and
9 (c) cause the writing so certified to be sent to the
10 Attorney-General.

11 **^65 Producing documents or other articles**

12 (1) If the Attorney-General authorises the production of documents or
13 other articles, a magistrate:

- 14 (a) must give written notice to each person by whom documents
15 or other articles are to be produced stating that the
16 authorisation has been given and setting out the date and time
17 when, and the place where, the documents or other articles
18 are to be produced; and

19 (b) may require production of the documents or other articles.

20 (2) Subject to subsection (3), if the documents or other articles are
21 produced, the magistrate must send them to the Attorney-General
22 together with a written statement certifying that they were
23 produced to the magistrate.

24 (3) In the case of documents, the magistrate may send to the
25 Attorney-General copies of the documents certified by the
26 magistrate to be true copies.

27 **^66 Legal representation**

28 (1) The evidence of a witness may be taken under section **^64** in the
29 presence or absence of:

- 30 (a) the person to whom the investigation conducted by the
31 Prosecutor, or the proceeding before the ICC, relates; or
-

Part 4 Other requests by ICC

Division 5 Taking evidence or producing documents or articles

Section ^67

- 1 (b) his or her legal representative (if any).
- 2 (2) The magistrate conducting a proceeding under either section ^64 or
3 ^65, or both, may permit:
- 4 (a) the person to whom the investigation conducted by the
5 Prosecutor, or the proceeding before the ICC, relates; and
- 6 (b) any other person giving evidence or producing documents or
7 other articles at the proceeding before the magistrate; and
- 8 (c) a representative of the Prosecutor or of the ICC;
9 to have legal representation at the proceeding before the
10 magistrate.

11 **^67 Form of certificates**

- 12 A certificate by a magistrate under subsection ^64(3) or ^65(2)
13 must state whether, when the evidence was taken or the documents
14 or other articles were produced, any of the following persons were
15 present:
- 16 (a) the person to whom the investigation conducted by the
17 Prosecutor, or the proceeding before the ICC, relates, or his
18 or her legal representative (if any);
- 19 (b) any other person giving evidence or producing documents or
20 other articles, or his or her legal representative (if any).

21 **^68 Compellability of persons to attend etc.**

- 22 (1) Subject to subsections (2) and (3), the laws of each State or
23 Territory with respect to compelling persons:
- 24 (a) to attend before a magistrate; and
- 25 (b) to give evidence, answer questions, and produce documents
26 or other articles;
- 27 on the hearing of a charge against a person for an offence against
28 the law of that State or Territory apply, so far as they are capable
29 of application, with respect to so compelling persons for the
30 purposes of this Division.

- 1 (2) For the purposes of this Division, the person to whom the
2 investigation conducted by the Prosecutor, or the proceeding
3 before the ICC, relates, is competent but not compellable to give
4 evidence.
- 5 (3) If:
- 6 (a) a person is required to give evidence, or produce documents
7 or other articles, for the purposes of an investigation
8 conducted by the Prosecutor or a proceeding before the ICC;
9 and
- 10 (b) the person is not compellable to answer a particular question,
11 or to produce a particular document or article, for the
12 purposes of that investigation or proceeding;
13 the person is not compellable to answer the question, or produce
14 the document or article, for the purposes of this Division.

1

2 **Division 6—Questioning of person being investigated or**
3 **prosecuted**

4 **^69 Assistance in questioning persons**

- 5 (1) This section applies if:
6 (a) the ICC requests assistance in questioning a person; and
7 (b) the Attorney-General is satisfied that:
8 (i) the request relates to an investigation of the person that
9 is being conducted by the Prosecutor or to a prosecution
10 of the person before the ICC; and
11 (ii) the person is or may be in Australia.
- 12 (2) The Attorney-General is to execute the request by authorising, in
13 writing, the questioning of the person.
- 14 (3) If the Attorney-General authorises the questioning of the person, a
15 magistrate is to ask the person in writing to appear before the
16 magistrate at a specified time and place for the purpose of being
17 questioned.
- 18 (4) If the person appears before the magistrate, the magistrate:
19 (a) may ask the person the questions to which the request relates;
20 and
21 (b) must cause a written record to be made of the questions
22 asked and any answers given; and
23 (c) must certify the correctness of the record; and
24 (d) must cause the record so certified to be sent to the
25 Attorney-General.
- 26 (5) If the person refuses or fails to appear before the magistrate, the
27 magistrate is to notify the Attorney-General in writing of the
28 refusal or failure.

1 **^70 Procedure where person questioned**

- 2 (1) Before a person is questioned under section ^69, the person must
3 be informed that there are grounds to believe that he or she has
4 committed a crime within the jurisdiction of the ICC and that he or
5 she has the following rights:
- 6 (a) the right to remain silent without such silence being a
7 consideration in the determination of guilt or innocence;
- 8 (b) the right to have legal assistance of his or her choosing or, if
9 he or she does not have legal assistance, to have legal
10 assistance assigned to him or her in any case where the
11 interests of justice so require and without payment by him or
12 her in such a case if he or she does not have sufficient means
13 to pay for the assistance;
- 14 (c) the right to have his or her legal representative present when
15 he or she is questioned unless he or she has voluntarily
16 waived that right.
- 17 (2) If there is any inconsistency between subsection (1) and any other
18 Australian law, subsection (1) prevails.
- 19 (3) This section does not give to any person a power to require another
20 person to answer questions.

Section ^71

1

2 **Division 7—Service of documents**

3 **^71 Assistance in arranging service of documents**

4

(1) This section applies if:

5

(a) the ICC requests assistance in arranging for the service of a document in Australia; and

6

7

(b) the Attorney-General is satisfied that:

8

(i) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

9

10

(ii) the person is or may be in Australia;

11

(2) The Attorney-General is to execute the request by authorising, in writing, the service of the document.

12

13

(3) If the Attorney-General authorises the service of the document, an appropriate authority is to:

14

15

(a) cause the document to be served:

16

(i) in accordance with any procedure specified in the request; or

17

18

(ii) if that procedure would be unlawful or inappropriate in Australia, or no procedure is specified—in accordance with Australian law;

19

20

and send to the Attorney-General a certificate stating that the document has been served; or

21

22

23

(b) if the document is not served—send to the Attorney-General a statement of the matters that prevented service.

24

25

(4) In this section:

26

document includes:

27

(a) a summons requiring a person to appear as a witness; and

28

29

(b) a summons to an accused person that has been issued under paragraph 7 of article 58 of the Statute.

30

(5) If:

Section ^71

- 1 (a) a document that is served on a person pursuant to an
2 authority given under this section is a summons referred to in
3 subsection (4); and
4 (b) the person fails to comply with the summons;
5 the person commits an offence punishable, on conviction, by
6 imprisonment for a period not exceeding 12 months.

Part 4 Other requests by ICC

Division 8 Facilitating the voluntary appearance of persons (other than prisoners) as witnesses or experts before the ICC

Section ⁷²

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Division 8—Facilitating the voluntary appearance of persons (other than prisoners) as witnesses or experts before the ICC

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⁷² Persons (other than prisoners) assisting investigation or giving evidence

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7

(1) This section applies if:

8

(a) the ICC requests assistance in facilitating the voluntary appearance of a person as a witness or expert before the ICC; and

9

10

and

11

(b) the Attorney-General is satisfied that:

12

(i) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

13

14

(ii) the person's appearance is requested so that the person can assist the investigation or give evidence at the proceeding; and

15

16

17

(iii) the person is in Australia and is not a prisoner; and

18

19

(iv) the person has consented in writing to assisting the investigation or giving evidence at the proceeding.

20

(2) The Attorney-General is to execute the request by making arrangements for the travel of the person to the ICC.

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Division 9—Temporary transfer of prisoners to the ICC

^73 Prisoners assisting investigation or giving evidence

- (1) This section applies if:
- (a) the ICC requests assistance in facilitating the temporary transfer of a person to the ICC; and
 - (b) the person is a prisoner who is in Australia (whether or not in custody); and
 - (c) 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) the prisoner’s attendance is requested for the purpose of assisting the investigation or giving evidence at the proceeding; and
 - (iii) the prisoner has consented in writing to assisting the investigation or giving evidence at the proceeding; and
 - (iv) the prisoner will be returned without delay by the ICC to Australia when the purposes of the transfer have been fulfilled.
- (2) If the prisoner is being held in custody, the Attorney-General is to execute the request by:
- (a) if the prisoner is a federal prisoner and is not also a State prisoner—directing that the prisoner be released from prison for the purpose of travelling to the ICC to assist the investigation or give evidence at the proceeding; or
 - (b) if the prisoner is a federal prisoner and also a State prisoner—directing, subject to the obtaining of any approvals required to be obtained from an authority of the relevant State, that the prisoner be released from prison for the purpose of such travel; or
 - (c) if the prisoner is a State prisoner and is not also a federal prisoner—seeking any approvals required to be obtained from an authority of the relevant State;

Part 4 Other requests by ICC

Division 9 Temporary transfer of prisoners to the ICC

Section 73

1 and, in any case, subject to the giving of any necessary directions
2 or the obtaining of any necessary approvals relevant to release of
3 the prisoner, making arrangements for such travel in the custody of
4 a police officer, or prison officer, appointed by the
5 Attorney-General for the purpose.

6 (3) If the prisoner, having been released from custody on parole, is not
7 being held in custody, the Attorney-General is to execute the
8 request by:

9 (a) if the prisoner is a federal prisoner and is not also a State
10 prisoner:

11 (i) approving the travel of the prisoner to the ICC to assist
12 the investigation or give evidence at the proceeding; and

13 (ii) obtaining such parole decisions as may be required; or

14 (b) if the prisoner is a federal prisoner and also a State
15 prisoner—subject to the obtaining of any parole decisions
16 required to be obtained from an authority of the relevant
17 State:

18 (i) approving the travel of the prisoner to the ICC to assist
19 the investigation or give evidence at the proceeding; and

20 (ii) obtaining such parole decisions as may be required; or

21 (c) if the prisoner is a State prisoner and is not also a federal
22 prisoner:

23 (i) approving the travel of the prisoner to the ICC to assist
24 the investigation or give evidence at the proceeding; and

25 (ii) seeking such parole decisions under the law of the
26 relevant State as may be required;

27 and, in any case, subject to the obtaining of any necessary parole
28 decisions, making arrangements for the travel of the prisoner to the
29 ICC.

30 (4) In this section:

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

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

1 ⁷⁴ **Effect of removal to foreign country on prisoners' terms of**
2 **imprisonment**

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

- 9 (a) is released from a prison under section ⁷³ pursuant to a
10 request by the ICC; and
11 (b) is in custody in connection with the request (including
12 custody outside Australia).

1

2 **Division 10—Examination of places or sites**

3 **^75 Assistance in examining places or sites**

4

(1) This section applies if:

5

(a) the ICC requests assistance in examining places or sites in
6 Australia; and

6

7

(b) the Attorney-General is satisfied that the request relates to an
8 investigation being conducted by the Prosecutor or a
9 proceeding before the ICC.

9

10

(2) The Attorney-General is to execute the request by authorising, in
11 writing, the examination of the places or sites.

11

12

(3) If the Attorney-General authorises the examination of a place or
13 site, an appropriate authority is to:

13

14

(a) examine the place or site in the way sought in the request;
15 and

15

16

(b) make such report on the examination as the authority
17 considers appropriate in the circumstances; and

17

18

(c) send the report to the Attorney-General.

19

(4) An authorisation under this section confers power on a person
20 acting under the authorisation to enter a place or site for the
21 purpose of examining it.

20

21

1

2 **Division 11—Search and seizure**

3 **^76 Attorney-General may authorise applications for search**
4 **warrants**

- 5 (1) This section applies if:
- 6 (a) the ICC makes a request to the Attorney-General compliance
 - 7 with which may involve the issue of a search warrant in
 - 8 relation to evidential material; and
 - 9 (b) the Attorney-General is satisfied that:
 - 10 (i) the request relates to an investigation being conducted
 - 11 by the Prosecutor or a proceeding before the ICC; and
 - 12 (ii) there are reasonable grounds to believe that the material
 - 13 is in Australia.
- 14 (2) The Attorney-General is to execute the request by authorising, in
- 15 writing, a police officer to apply to a magistrate of the State or
- 16 Territory in which that material is believed to be located for a
- 17 search warrant.

18 **^77 Applications for search warrants**

- 19 (1) If:
- 20 (a) a police officer is authorised under section ^76 to apply for a
 - 21 search warrant; and
 - 22 (b) the police officer has reasonable grounds for suspecting that
 - 23 the evidential material is, or within the applicable period
 - 24 referred to in subsection (3) of this section will be, at any
 - 25 premises;
- 26 the police officer may, by an information on oath setting out the
- 27 grounds for that suspicion, apply for a search warrant in relation to
- 28 the premises to search for that material.
- 29 (2) If:
- 30 (a) a police officer is authorised under section ^76 to apply for a
 - 31 search warrant; and

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Division 11 Search and seizure

Section ^77

1 (b) the police officer has reasonable grounds for suspecting that
2 the evidential material is, or within the applicable period
3 referred to in subsection (3) of this section will be, in a
4 person's possession;
5 the police officer may, by an information on oath setting out the
6 grounds for that suspicion, apply for a search warrant in relation to
7 that person to search for that material.

8 (3) For the purposes of this section, the *applicable period* is:
9 (a) if the application for the warrant is made by telephone, telex,
10 fax or other electronic means, as provided by section ^109—
11 48 hours; or
12 (b) otherwise—72 hours.

13 Note: Part 6 deals with search warrants.

1

2 **Division 12—Provision of records or documents**

3 **[^]78 Facilitating the provision of records or documents**

4

(1) This section applies if:

5

(a) the ICC requests assistance for the provision of records or documents, including official records or official documents; and

6

7

8

(b) the Attorney-General is satisfied that:

9

10

(i) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

11

(ii) the records or documents are or may be in Australia.

12

(2) The Attorney-General is to execute the request by authorising, in writing, the provision of the records or documents.

13

14

(3) If the Attorney-General authorises the provision of records or documents, an appropriate authority is to:

15

16

(a) locate and make available the records or documents; and

17

(b) make such report on his or her efforts as he or she considers to be appropriate in the circumstances; and

18

19

(c) send to the Attorney-General the report and any of the records or documents that are located.

20

21

(4) This section does not give to any person power to require the production of a record or document.

22

1

2 **Division 13—Protecting victims and witnesses and**
3 **preserving evidence**

4 **^79 Protecting victims and witnesses and preserving evidence**

- 5 (1) This section applies if:
- 6 (a) the ICC requests assistance in protecting victims or witnesses
7 or preserving evidence; and
- 8 (b) the Attorney-General is satisfied that:
- 9 (i) the request relates to an investigation being conducted
10 by the Prosecutor or a proceeding before the ICC; and
- 11 (ii) the assistance sought is not prohibited by Australian
12 law.
- 13 (2) The Attorney-General is to execute the request by authorising, in
14 writing, the provision of the assistance.
- 15 (3) If the Attorney-General authorises the provision of the assistance,
16 an appropriate authority is to:
- 17 (a) give effect to the request; and
- 18 (b) prepare such report on his or her efforts as he or she
19 considers to be appropriate in the circumstances; and
- 20 (c) send the report to the Attorney-General.

1
2 **Division 14—Identification, tracing, and freezing or**
3 **seizure, of tainted property**

4 **^80 Application of Division**

5 This Division applies if:

- 6 (a) the ICC makes a request to the Attorney-General for the
7 identification, tracing, and freezing or seizure, of tainted
8 property in relation to a crime within the jurisdiction of the
9 ICC; and
10 (b) the Attorney-General is satisfied that a person (the
11 *defendant*):
12 (i) has been, or is about to be, charged with the crime
13 before the ICC; or
14 (ii) has been convicted by the ICC of the crime.

15 **^81 Restraining orders**

- 16 (1) The Attorney-General is to execute the request by authorising, in
17 writing, the DPP to apply to an appropriate court for an order under
18 subsection (2) against one or more of the following:
19 (a) specified property of the defendant;
20 (b) all the property of the defendant (including property acquired
21 after the making of the order);
22 (c) all the property of the defendant (including property acquired
23 after the making of the order) other than specified property;
24 (d) specified property of a person other than the defendant.
25 (2) If the DPP applies to a court for an order under this subsection
26 against property, the court may, subject to section ^82, by order:
27 (a) direct that the property, or such part of the property as is
28 specified in the order, is not to be disposed of, or otherwise
29 dealt with, by any person, except in such manner and in such
30 circumstances (if any) as are specified in the order; and

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Division 14 Identification, tracing, and freezing or seizure, of tainted property

Section 81

- 1 (b) if the court is satisfied that the circumstances so require—
2 direct the Official Trustee to take custody and control of the
3 property, or of such part of the property as is specified in the
4 order.
- 5 (3) A restraining order against a person's property may be made
6 subject to such conditions as the court thinks fit and, without
7 limiting the generality of this, may make provision for meeting, out
8 of the property or a specified part of the property, all or any of the
9 following:
- 10 (a) the person's reasonable living expenses (including the
11 reasonable living expenses of the person's dependants (if
12 any)) and reasonable business expenses;
- 13 (b) a specified debt incurred by the person in good faith (being a
14 debt to which paragraph (a) does not apply).
- 15 (4) A court must not make provision of a kind referred to in
16 subsection (3) unless it is satisfied that the defendant cannot meet
17 the expense or debt concerned out of property that is not subject to
18 a restraining order.
- 19 (5) Despite anything in the *Bankruptcy Act 1966*, money that has come
20 into the custody and control of the Official Trustee under a
21 restraining order must not be paid into the Common Investment
22 Fund established under section 20B of that Act.
- 23 (6) If the Official Trustee is given a direction under paragraph (2)(b) in
24 relation to property, the Official Trustee may do anything that is
25 reasonably necessary for the purpose of preserving the property
26 including, without limiting the generality of this:
- 27 (a) becoming a party to any civil proceedings affecting the
28 property; and
- 29 (b) ensuring that the property is insured; and
- 30 (c) if the property consists, wholly or partly, of securities or
31 investments—realising or otherwise dealing with the
32 securities or investments; and
- 33 (d) if the property consists, wholly or partly, of a business:

- 1 (i) employing, or terminating the employment of, persons
2 in the business; and
3 (ii) doing any other thing that is necessary or convenient for
4 carrying on the business on a sound commercial basis.
- 5 (7) If the Official Trustee is given a direction under paragraph (2)(b) in
6 relation to shares in a company, it is entitled:
7 (a) to exercise the rights attaching to the shares as if it were the
8 registered holder of the shares; and
9 (b) to do so to the exclusion of the registered holder.
- 10 (8) Neither paragraph (6)(c) nor subsection (7) limits the generality of
11 the other of those provisions.
- 12 (9) If the DPP applies to a court for an order under subsection (2), a
13 witness in the proceedings relating to the application must not be
14 required to answer a question or to produce a document if the court
15 is satisfied that the answering of the question or the production of
16 the document may prejudice the investigation of, or the prosecution
17 of a person for, an offence.

18 **^82 Grounds for making restraining order**

- 19 (1) Subject to this section, the court must make a restraining order
20 against the property.
- 21 (2) If the defendant has not been convicted of the crime within the
22 jurisdiction of the ICC, the court must not make a restraining order
23 unless:
24 (a) the application for the order is supported by an affidavit of a
25 police officer stating that the officer believes that the
26 defendant committed the crime; and
27 (b) the court is satisfied, having regard to the matters contained
28 in the affidavit, that there are reasonable grounds for holding
29 that belief.
- 30 (3) If the application is made in reliance on the proposed charging of
31 the defendant with the crime within the jurisdiction of the ICC, the
32 court must not make a restraining order unless it is satisfied that the

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Division 14 Identification, tracing, and freezing or seizure, of tainted property

Section ^82

- 1 defendant will be charged with the crime or a related crime within
2 the jurisdiction of the ICC within one month.
- 3 (4) If the application seeks a restraining order against specified
4 property of a person other than the defendant, the court must not
5 make a restraining order against the property unless:
- 6 (a) the application is supported by an affidavit of a police officer
7 stating that:
- 8 (i) the officer believes that the property is tainted property
9 in relation to the crime within the jurisdiction of the
10 ICC; and
- 11 (ii) the officer believes that the property is subject to the
12 effective control of the defendant; and
- 13 (b) the court is satisfied, having regard to the matters contained
14 in the affidavit, that there are reasonable grounds for holding
15 that belief.
- 16 (5) The court may make a restraining order in respect of property
17 whether or not there is any risk of the property being disposed of,
18 or otherwise dealt with, in a way that would defeat the operation of
19 this Division.
- 20 (6) A court may refuse to make a restraining order if the
21 Commonwealth refuses or fails to give to the court such
22 undertakings as the court considers appropriate with respect to the
23 payment of damages or costs, or both, in relation to the making and
24 operation of the order.
- 25 (7) For the purposes of an application under section ^81, the DPP may,
26 on behalf of the Commonwealth, give to the court such
27 undertakings with respect to the payment of damages or costs, or
28 both, as are required by the court.
- 29 (8) An affidavit made by a police officer for the purposes of this
30 section that states that the officer believes a particular matter is to
31 set out the grounds on which the officer holds that belief.

1 **^83 Notice of application for restraining order**

- 2 (1) Subject to subsection (2), the DPP must give written notice of an
3 application for a restraining order against property to:
4 (a) the owner of the property; and
5 (b) any other person who the DPP has reason to believe may
6 have an interest in the property.
- 7 (2) If the DPP requests the court to do so, the court must consider the
8 application without notice having been given in accordance with
9 subsection (1) but, subject to section **^84**, a restraining order made
10 because of this subsection ceases to have effect at the end of such
11 period (not exceeding 14 days) as is specified by the court in the
12 restraining order.
- 13 (3) The court may, at any time before the final determination of an
14 application for a restraining order, direct the DPP to give or publish
15 notice of the application to a specified person or class of persons,
16 in the manner and within the period that the court considers
17 appropriate.

18 **^84 Extension of certain restraining orders**

- 19 (1) Subject to subsection (2), the court may, on application made by
20 the DPP before the end of the period mentioned in subsection
21 **^83(2)**, extend the period of operation of a restraining order made
22 in reliance on that subsection.
- 23 (2) Section **^82** (other than subsection **^82(3)**) applies, with the
24 necessary changes made, to the extension of the period of
25 operation of a restraining order made in reliance on subsection
26 **^83(2)** in the same way as it applies to the making of a restraining
27 order.
- 28 (3) The DPP must give written notice of an application under
29 subsection (1) for the extension of the period of operation of a
30 restraining order to:
31 (a) the owner of the property against which the restraining order
32 was made; and

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Division 14 Identification, tracing, and freezing or seizure, of tainted property

Section ^85

1 (b) any other person who the DPP has reason to believe may
2 have an interest in the property.

3 (4) The court may, at any time before the final determination of an
4 application for an extension of the period of operation of a
5 restraining order, direct the DPP to give or publish notice of the
6 application to a specified person or class of persons, in the manner
7 and within the period that the court considers appropriate.

8 **^85 Persons who may appear and adduce evidence**

9 (1) If:

- 10 (a) the DPP applies for a restraining order against property; and
11 (b) notice of the application is given in accordance with
12 subsection ^83(1);

13 any person who claims an interest in the property may appear and
14 adduce evidence at the hearing of the application.

15 (2) If the DPP applies for the extension of the period of operation of a
16 restraining order that has been made in respect of property, any
17 person who claims an interest in the property may appear and
18 adduce evidence at the hearing of the application.

19 **^86 Notice of restraining orders**

20 (1) Subject to subsection (2), if a restraining order is made against a
21 person's property, the DPP must give the person written notice of
22 the order.

23 (2) If:

- 24 (a) a court makes a restraining order; and
25 (b) the court is satisfied that it would be in the public interest to
26 delay giving notice of the order to a person;

27 the court may order that giving the person notice of the restraining
28 order be delayed for such period as is specified in the order under
29 this subsection, and the DPP must give the person notice of the
30 restraining order as soon as practicable after the end of the period
31 specified.

1 [^]87 **Court may make further orders**

- 2 (1) If a court makes a restraining order, the court may, at the time
3 when it makes the restraining order or at any later time, make any
4 ancillary orders that the court considers appropriate and, without
5 limiting the generality of this, the court may make any one or more
6 of the following orders:
- 7 (a) an order varying the property to which the restraining order
8 relates;
- 9 (b) an order varying any condition to which the restraining order
10 is subject;
- 11 (c) an order for the examination on oath before the court or the
12 registrar of the court of any person, including:
- 13 (i) a person whose property is the subject of the restraining
14 order (the *owner*); or
- 15 (ii) the defendant;
- 16 about the affairs (including the nature and location of any
17 property) of:
- 18 (iii) anyone else who is either the owner or the defendant, or
19 both; and
- 20 (iv) if the person to be examined is either the owner or the
21 defendant or both—that person;
- 22 (d) an order with respect to the carrying out of any undertaking
23 with respect to the payment of damages or costs given by the
24 Commonwealth in connection with the making of the
25 restraining order;
- 26 (e) an order directing:
- 27 (i) the owner; or
- 28 (ii) if the owner is not the defendant—the defendant; or
- 29 (iii) if the owner is a body corporate—a director of the body
30 corporate specified by the court;
- 31 to give to:
- 32 (iv) if the restraining order is, or includes, an order made
33 under paragraph [^]81(2)(b)—the Official Trustee; and
- 34 (v) in any other case—the applicant for the ancillary order
35 or such other person as the court directs;
-

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Section 87

- 1 within a period specified in the ancillary order, a statement
2 sworn on oath setting out such particulars of the property, or
3 dealings with the property, of the owner or the defendant, as
4 the case may be, as the court thinks proper;
- 5 (f) if the restraining order directed the Official Trustee to take
6 custody and control of property:
- 7 (i) an order regulating the manner in which the Official
8 Trustee may exercise its powers or perform its duties
9 under the restraining order;
- 10 (ii) an order determining any question relating to the
11 property to which the restraining order relates, including
12 any question relating to the liabilities of the owner, or
13 the exercise of the powers, or the performance of the
14 duties, of the Official Trustee, with respect to the
15 property to which the restraining order relates;
- 16 (iii) an order directing the owner or another person to do any
17 act or thing necessary or convenient to be done to
18 enable the Official Trustee to take custody and control
19 of the property in accordance with the restraining order.
- 20 (2) An order under subsection (1) may be made on application by:
- 21 (a) the DPP; or
22 (b) the owner; or
23 (c) if the restraining order directed the Official Trustee to take
24 custody and control of property—the Official Trustee; or
25 (d) with the leave of the court—any other person.
- 26 (3) An ancillary order made in relation to a restraining order does not
27 cease to have effect merely because the restraining order, or part of
28 it, ceases to be in force under paragraph 94(2)(e).
- 29 (4) If:
- 30 (a) a court, in reliance on the conviction, charging, or proposed
31 charging, of the defendant makes a restraining order against
32 property; and

- 1 (b) a person having an interest in the property applies to the
2 court for a variation of the order to exclude the person's
3 interest from the order;
- 4 the court must grant the application where:
- 5 (c) if the applicant is not the defendant and the restraining order
6 was not made because of subsection ^82(4)—the court is
7 satisfied that:
- 8 (i) the applicant was not, in any way, involved in the
9 commission of the crime within the jurisdiction of the
10 ICC; and
- 11 (ii) if the applicant acquired the interest at the time of or
12 after the commission, or alleged commission, of the
13 crime—the applicant acquired the interest for sufficient
14 consideration and without knowing, and in
15 circumstances such as not to arouse a reasonable
16 suspicion, that the property was tainted property; or
- 17 (d) if the applicant is not the defendant and the restraining order
18 was made because of subsection ^82(4)—the court is
19 satisfied that:
- 20 (i) the applicant was not, in any way, involved in the
21 commission of the crime within the jurisdiction of the
22 ICC; and
- 23 (ii) the property is not tainted property in relation to the
24 crime; and
- 25 (iii) the applicant's interest in the property is not subject to
26 the effective control of the defendant; or
- 27 (e) in any case—the court is satisfied that it is in the public
28 interest to do so having regard to all the circumstances,
29 including:
- 30 (i) any financial hardship or other consequence of the
31 interest remaining subject to the order; and
- 32 (ii) the serious nature of the crime; and
- 33 (iii) the likelihood that the interest will be subject to a
34 forfeiture order.

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- 1 (5) If a person is examined before a court or the registrar of a court
2 pursuant to an order under subsection (1), the person is not excused
3 from answering a question when required to do so by the court or
4 the registrar, as the case may be, on the ground that the answer to
5 the question might tend to incriminate the person or make the
6 person liable to forfeiture or a penalty.
- 7 (6) If a person is examined before a court or the registrar of a court
8 pursuant to an order under subsection (1), a statement or disclosure
9 made by the person in answer to a question put in the course of the
10 examination, and any information, document or thing obtained as a
11 direct or indirect consequence of the statement or disclosure, is not
12 admissible against the person in any criminal proceedings except a
13 proceeding for giving false testimony in the course of the
14 examination.
- 15 (7) A person whom an order under paragraph (1)(e) directs to give a
16 statement is not excused from giving the statement, or from setting
17 out particulars in the statement, on the ground that the statement or
18 particulars, as the case may be, might tend to incriminate the
19 person or make the person liable to a forfeiture or penalty.
- 20 (8) If a person gives a statement under an order made under
21 paragraph (1)(e), neither the statement, nor any information,
22 document or thing obtained as a direct or indirect consequence of
23 the statement, is admissible against the person in any criminal
24 proceedings except a proceeding in respect of the falsity of the
25 statement.
- 26 (9) For the purposes of subsection (6) or (8), proceedings on an
27 application for a restraining order are not criminal proceedings.
- 28 (10) If the DPP applies to a court for an order under subsection (1), a
29 witness must not be required to answer a question or to produce a
30 document if the court is satisfied that the answering of the question
31 or the production of the document may prejudice the investigation
32 of, or the prosecution of a person for, an offence.

1 **^88 Order for taxation of legal expenses to be met out of restrained**
2 **property**

- 3 (1) If:
- 4 (a) a court makes a restraining order directing the Official
 - 5 Trustee to take custody and control of property; and
 - 6 (b) the order makes provision for meeting, out of the property or
 - 7 part of it, a person's reasonable expenses in defending a
 - 8 criminal charge;
- 9 the Official Trustee may apply to the court for an order under
10 subsection (3).
- 11 (2) The Official Trustee must give written notice of an application
12 under subsection (1) to the person.
- 13 (3) On an application under subsection (1), the court may order that
14 the expenses be taxed as provided in the order or may dismiss the
15 application.
- 16 (4) If the Official Trustee makes an application under subsection (1), it
17 need not, except as ordered by the court after the application is
18 made, take any steps for the purpose of meeting the expenses as
19 provided by the restraining order unless and until:
- 20 (a) an order under subsection (3) in relation to the expenses is
 - 21 complied with; or
 - 22 (b) the application, and any appeal arising out of it, are finally
 - 23 determined, or otherwise disposed of, otherwise than by the
 - 24 making of such an order.

25 **^89 Registration of restraining orders**

26 If a restraining order applies to property of a particular kind and the
27 provisions of any Australian law provide for the registration of title
28 to, or charges over, property of that kind:

- 29 (a) the authority responsible for administering those provisions
30 may, on application by the DPP, record on the register kept
31 pursuant to those provisions the particulars of the restraining
32 order; and

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- 1 (b) if those particulars are so recorded—a person who
2 subsequently deals with the property is taken, for the
3 purposes of section ^90, to have notice of the restraining
4 order at the time of the dealing.

5 **^90 Contravention of restraining orders**

- 6 (1) A person who intentionally contravenes a restraining order by
7 disposing of, or otherwise dealing with, property that is subject to
8 the restraining order commits an offence punishable, upon
9 conviction, by imprisonment for a period not exceeding 5 years.

10 (2) If:

- 11 (a) a restraining order is made against property; and
12 (b) the property is disposed of, or otherwise dealt with, in
13 contravention of the restraining order; and
14 (c) the disposition or dealing was either not for sufficient
15 consideration or not in favour of a person who acted in good
16 faith;

17 the DPP may apply to the court that made the restraining order for
18 an order that the disposition or dealing be set aside.

19 (3) If the DPP makes an application under subsection (2) in relation to
20 a disposition or dealing, the court may make an order:

- 21 (a) setting the disposition or dealing aside as from the day on
22 which the disposition or dealing took place; or
23 (b) setting the disposition or dealing aside as from the day of the
24 order under this subsection and declaring the respective
25 rights of any persons who acquired interests in the property
26 on or after the day on which the disposition or dealing took
27 place and before the day of the order under this subsection.

28 **^91 Duties of Official Trustee**

29 If:

- 30 (a) property of a person is in the custody and control of the
31 Official Trustee in accordance with this Division; and
32 (b) the person becomes a bankrupt; and
-

1 (c) because of section 58 of the *Bankruptcy Act 1966*, the
2 property vests in the Official Trustee or a registered trustee;
3 the property is taken to be in the possession, or under the control,
4 of the Official Trustee as, or on behalf of, the trustee of the estate
5 of the bankrupt, and not otherwise.

6 **[^]92 Protection of Official Trustee from personal liability in certain**
7 **cases**

- 8 (1) If:
- 9 (a) a court has made a restraining order directing the Official
10 Trustee to take custody and control of all the property of a
11 person or of all the property of a person other than specified
12 property; and
 - 13 (b) the Official Trustee has taken custody and control of any
14 property, without notice of any claim by another person in
15 respect of that property; and
 - 16 (c) the first-mentioned person did not, at the date of the
17 restraining order, have any beneficial interest in the property
18 referred to in paragraph (b);
- 19 the Official Trustee is not personally liable for:
- 20 (d) any loss or damage arising from its having taken custody and
21 control of the property sustained by a person claiming the
22 property or an interest in the property; or
 - 23 (e) the cost of proceedings taken to establish a claim to the
24 property or to an interest in the property;
- 25 unless the court in which the claim is made is of the opinion that
26 the Official Trustee has been guilty of negligence in respect of the
27 taking of custody and control of the property.
- 28 (2) If the Official Trustee has, in accordance with a restraining order
29 made in reliance on a person's conviction of a crime within the
30 jurisdiction of the ICC or in reliance on the charging, or proposed
31 charging, of a person with such a crime, taken custody and control
32 of property specified in the restraining order, the Official Trustee is
33 not personally liable for:

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- 1 (a) any loss or damage arising from its having taken custody and
2 control of the property (being loss or damage sustained by
3 some other person claiming the property or an interest in the
4 property); or
5 (b) the cost of proceedings taken to establish a claim to the
6 property, or to an interest in the property;
7 unless the court in which the claim is made is of the opinion that
8 the Official Trustee has been guilty of negligence in respect of the
9 taking of custody and control of the property.
- 10 (3) The Official Trustee is not personally liable for any rates, land tax
11 or municipal or other statutory charges imposed by or under an
12 Australian law in respect of property of which it has been directed
13 by a restraining order to take custody and control, being rates, land
14 tax or municipal or other statutory charges that fall due on or after
15 the date of the order, except to the extent, if any, of the rents and
16 profits received by the Official Trustee in respect of that property
17 on or after the date of the order.
- 18 (4) If the Official Trustee, having been directed by a restraining order
19 to take custody and control of a business carried on by a person,
20 carries on that business, the Official Trustee is not personally liable
21 for any payment in respect of long service leave or extended leave
22 for which the person was liable or for any payment in respect of
23 long service leave or extended leave to which a person employed
24 by the Official Trustee in its capacity of custodian and controller of
25 the business, or the legal personal representative of such a person,
26 becomes entitled after the date of the order.

27 **^93 Costs etc. payable to Official Trustee**

- 28 (1) The regulations may make provision for or in relation to:
29 (a) the costs, charges and expenses incurred in connection with;
30 and
31 (b) the Official Trustee's remuneration in respect of;
32 the performance or exercise by the Official Trustee of functions,
33 duties or powers under this Division.

- 1 (2) An amount equal to each amount of remuneration that the Official
2 Trustee receives under the regulations is to be paid into the
3 Consolidated Revenue Fund.

4 **[^]94 When restraining order ceases to be in force**

- 5 (1) If, at the end of the period of one month after the making of a
6 restraining order in reliance on the proposed charging of a person
7 with a crime within the jurisdiction of the ICC, the person has not
8 been charged with the crime or a related crime within the
9 jurisdiction of the ICC, the order ceases to be in force at the end of
10 that period.

- 11 (2) If:

- 12 (a) a restraining order is made in reliance on a person's
13 conviction of a crime within the jurisdiction of the ICC or the
14 charging of a person with such a crime; or
15 (b) a restraining order is made in reliance on the proposed
16 charging of a person with a crime within the jurisdiction of
17 the ICC and the person is, within one month after the making
18 of the order, charged with the crime or a related crime within
19 the jurisdiction of the ICC;

20 the following provisions have effect:

- 21 (c) if, within the relevant period in relation to the restraining
22 order, the charge is withdrawn and the person is not charged
23 with a related crime within the jurisdiction of the ICC by the
24 time the charge is withdrawn, the restraining order ceases to
25 be in force when the charge is withdrawn;
26 (d) if, within the relevant period in relation to the restraining
27 order, the person is acquitted of the charge and the person is
28 not charged with a related crime within the jurisdiction of the
29 ICC by the time of the acquittal, the restraining order ceases
30 to be in force when the acquittal occurs;
31 (e) if some or all of the property subject to the restraining order
32 is forfeited under Part 11, the restraining order, to the extent
33 to which it relates to that property, ceases to be in force when
34 that property is forfeited;

Part 4 Other requests by ICC

Division 14 Identification, tracing, and freezing or seizure, of tainted property

Section 94

- 1 (f) if, within the relevant period in relation to the restraining
2 order, an application is made to a court under subsection (3)
3 for an extension of the period of operation of the restraining
4 order and the court refuses the application after the end of the
5 relevant period, the restraining order ceases to be in force
6 when the court refuses the application;
- 7 (g) subject to the preceding paragraphs, if, within the relevant
8 period in relation to the restraining order, an application is
9 made to a court under subsection (3) for an extension of the
10 period of operation of the restraining order and that
11 application is granted, the restraining order ceases to be in
12 force at such time, or on the occurrence of such event, as is
13 specified in an order of the court made under that subsection;
- 14 (h) in any other case the restraining order ceases to be in force at
15 the end of the relevant period in relation to the restraining
16 order.
- 17 (3) At any time before the end of the relevant period in relation to a
18 restraining order against property made in reliance on a person's
19 conviction of a crime within the jurisdiction of the ICC or the
20 charging, or proposed charging, of a person with such a crime, the
21 DPP may apply to the court that made the restraining order for an
22 extension of the period of operation of the restraining order and, if
23 the court is satisfied that the property or part of the property may
24 be forfeited under Part 11, the court may:
- 25 (a) by order, extend the period of operation of the restraining
26 order; and
- 27 (b) make such other order or orders as it considers appropriate in
28 relation to the operation of the restraining order.
- 29 (4) The DPP must give a person written notice of an application under
30 subsection (3) in relation to a restraining order in respect of
31 property of the person.
- 32 (5) For the purposes of this section, the *relevant period* in relation to a
33 restraining order is the period beginning on the day when the order
34 was made and ending:

- 1 (a) if an order has, or orders have, been made under
2 subsection (3) extending the restraining order's period of
3 operation—at such time, or on the occurrence of such event,
4 as is specified in the order, or the last of the orders, so made;
5 or
6 (b) if paragraph (a) does not apply but an order has, or orders
7 have, been made because of paragraph ^87(1)(a), (b) or (f) in
8 relation to the restraining order—at the end of 6 months after
9 the day when the order, or the last of the orders, was so
10 made; or
11 (c) in any other case—at the end of 6 months after the day when
12 the restraining order was made.
- 13 (6) In this section:
14 *extend* includes further extend.

15 **^95 Notice of applications under this Division**

16 A person who makes an application under section ^87 in relation to
17 a restraining order must give written notice of the application to
18 each other person who is entitled, because of subsection ^87(2), to
19 make an application under section ^87 in relation to the restraining
20 order.

Section ^96

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2 **Division 15—Other types of assistance**

3 **^96 Other types of assistance**

4

(1) This section applies if:

5

(a) the ICC requests any type of assistance referred to in paragraph ^8(1)(b); and

6

7

(b) the Attorney-General is satisfied that the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC.

8

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(2) The Attorney-General must refuse the request if the request is prohibited by Australian law and:

11

12

(a) the ICC does not modify the request as contemplated by paragraph 3 of article 93 of the Statute and section ^52; or

13

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(b) the assistance requested cannot be provided in a way referred to in paragraph 5 of article 93 of the Statute and subsection ^12(2) or can only be provided subject to conditions that the ICC does not accept.

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(3) If subsection (2) does not apply, the Attorney-General is to execute the request by authorising, in writing, the provision of the assistance.

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(4) If the Attorney-General authorises the provision of the assistance, an appropriate authority is to:

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(a) take such action as the authority thinks appropriate in the particular case; and

24

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(b) prepare a written report with respect to the action taken; and

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(c) send the report to the Attorney-General.

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2 **Division 16—Miscellaneous**

3 **[^]97 Effect of authorisation to execute request**

4 At any time before a formal response to a request for cooperation is
5 sent to the ICC, the Attorney-General may decide that the request
6 is to be refused, or the execution of the request is to be postponed,
7 on a ground specified in section [^]50 or [^]51 even if the
8 Attorney-General has previously authorised the execution of the
9 request.

10 **[^]98 Request may relate to assistance sought by defence**

11 To avoid doubt, if the ICC makes a request to assist a defendant in
12 the preparation of his or her defence, the request must be dealt with
13 in the same way as a request for assistance of a similar type made
14 by the ICC to assist the Prosecutor would be dealt with.

15 **[^]99 Prosecutor may execute request**

- 16 (1) The Prosecutor may execute a request for cooperation that does not
17 involve the taking of any compulsory measures in Australia in the
18 circumstances specified in paragraph 4 of article 99 of the Statute.
- 19 (2) If the Attorney-General identifies problems with the execution of a
20 request to which paragraph 4(b) of article 99 of the Statute relates,
21 the Attorney-General must, without delay, consult with the ICC in
22 order to resolve the matter.
- 23 (3) The provisions of this Act and the Statute, allowing a person heard
24 or examined by the ICC under article 72 of the Statute to invoke
25 restrictions designed to prevent disclosure of confidential
26 information connected with national security, apply to the
27 execution of requests for assistance under article 99 of the Statute.

Section ^100

1

2 **Part 5—Investigations or sittings of the ICC in**
3 **Australia**
4

5 **^100 Prosecutor may conduct investigations in Australia**

6 The Prosecutor may conduct investigations in Australia:

- 7 (a) in accordance with Part 9 of the Statute; or
8 (b) as authorised by the Pre-Trial Chamber under paragraph 3(d)
9 of article 57 of the Statute.

10 **^101 ICC sittings in Australia**

- 11 (1) The ICC may sit in Australia for the purpose of performing its
12 functions under the Statute or the Rules.
13 (2) Without limiting subsection (1), the ICC may sit in Australia for
14 the purpose of:
15 (a) taking evidence; or
16 (b) conducting or continuing a proceeding; or
17 (c) giving judgment in a proceeding; or
18 (d) reviewing a sentence.

19 **^102 ICC's powers while sitting in Australia**

20 While the ICC is sitting in Australia, it may exercise its functions
21 and powers as provided under the Statute and the Rules.

22 **^103 ICC may require witnesses at sittings in Australia to give**
23 **undertakings as to truthfulness of their evidence**

24 The ICC may, at any sitting of the ICC in Australia, require, in
25 accordance with the Rules, a witness to give an undertaking as to
26 the truthfulness of the evidence to be given by the witness.

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Part 6—Search, seizure and powers of arrest

Division 1—Search warrants

[^]104 When search warrants can be issued

- (1) A magistrate may issue a warrant to search premises if:
 - (a) an application has been made to the magistrate under subsection [^]27(1) or [^]77(1); and
 - (b) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the applicable period referred to in subsection (3) of this section will be, any evidential material at the premises.
- (2) A magistrate may issue a warrant authorising an ordinary search or a frisk search of a person if:
 - (a) an application has been made to the magistrate under subsection [^]27(2) or [^]77(2); and
 - (b) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the person has, or within the applicable period referred to in subsection (3) of this section will have, any evidential material in his or her possession.
- (3) For the purposes of subsections (1) and (2), the *applicable period* is:
 - (a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section [^]109—48 hours; or
 - (b) otherwise—72 hours.
- (4) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person must state that suspicion, and the grounds for that suspicion, in the information.

Part 6 Search, seizure and powers of arrest

Division 1 Search warrants

Section 105

- 1 (5) If the person applying for the warrant is a member or special
2 member of the Australian Federal Police and has, at any time
3 previously, applied for a warrant relating to the same person or
4 premises, the person must state particulars of those applications
5 and their outcome in the information.
- 6 (6) A magistrate in New South Wales or the Australian Capital
7 Territory may issue a warrant in relation to premises or a person in
8 the Jervis Bay Territory.
- 9 (7) A magistrate in a State may:
- 10 (a) issue a warrant in relation to premises or a person in that
11 State; or
- 12 (b) issue a warrant in relation to premises or a person in an
13 external Territory; or
- 14 (c) issue a warrant in relation to premises or a person in another
15 State or in the Jervis Bay Territory if he or she is satisfied
16 that there are special circumstances that make the issue of the
17 warrant appropriate; or
- 18 (d) issue a warrant in relation to a person wherever the person is
19 in Australia if he or she is satisfied that it is not possible to
20 predict where the person may be.

105 Content of warrants

- 21
- 22 (1) If a magistrate issues a search warrant, the magistrate is to state in
23 the warrant:
- 24 (a) the purpose for which it is issued, including the crime within
25 the jurisdiction of the ICC to which the application for the
26 warrant relates; and
- 27 (b) a description of the premises to which the warrant relates or
28 the name or description of the person to whom it relates; and
- 29 (c) the kinds of evidential material that are to be searched for
30 under the warrant; and
- 31 (d) the name of the police officer who, unless he or she inserts
32 the name of another police officer in the warrant, is to be
33 responsible for executing the warrant; and

- 1 (e) the period for which the warrant remains in force, which
2 must not be more than:
3 (i) if the warrant is issued on an application by telephone,
4 telex, fax or other electronic means as provided by
5 section [^]109—48 hours; or
6 (ii) otherwise—7 days; and
7 (f) whether the warrant may be executed at any time or only
8 during particular hours.
- 9 (2) Paragraph (1)(e) does not prevent the issue of successive warrants
10 in relation to the same premises or person.
- 11 (3) The magistrate is also to state, in a warrant in relation to premises:
12 (a) that the warrant authorises the seizure of a thing (other than
13 evidential material of the kind referred to in paragraph (1)(c))
14 found at the premises in the course of the search that the
15 executing officer or an officer assisting believes on
16 reasonable grounds to be:
17 (i) evidential material; or
18 (ii) a thing relevant to an indictable offence against an
19 Australian law;
20 if the executing officer or an officer assisting believes on
21 reasonable grounds that seizure of the thing is necessary to
22 prevent its concealment, loss or destruction or its use in
23 committing the crime within the jurisdiction of the ICC or an
24 indictable offence against an Australian law; and
25 (b) whether the warrant authorises an ordinary search or a frisk
26 search of a person who is at or near the premises when the
27 warrant is executed if the executing officer or an officer
28 assisting suspects on reasonable grounds that the person has
29 any evidential material or seizable items in his or her
30 possession.
- 31 (4) The magistrate is also to state, in a warrant in relation to a person:
32 (a) that the warrant authorises the seizure of a thing (other than
33 evidential material of the kind referred to in paragraph (1)(c))
34 found, in the course of the search, in the possession of the
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Section ^106

- 1 person or in or on a recently used conveyance, being a thing
2 that the executing officer or an officer assisting believes on
3 reasonable grounds to be:
- 4 (i) evidential material; or
 - 5 (ii) a thing relevant to an indictable offence against an
6 Australian law;
- 7 if the executing officer or an officer assisting believes on
8 reasonable grounds that seizure of the thing is necessary to
9 prevent its concealment, loss or destruction or its use in
10 committing the crime within the jurisdiction of the ICC or an
11 indictable offence against an Australian law; and
- 12 (b) the kind of search of a person that the warrant authorises.

13 **^106 The things authorised by a search warrant in relation to**
14 **premises**

- 15 (1) A warrant in force in relation to premises authorises the executing
16 officer or an officer assisting:
- 17 (a) to enter the warrant premises and, if the premises are a
18 conveyance, to enter the conveyance, wherever it is; and
 - 19 (b) to search for and record fingerprints found at the premises
20 and to take samples of things found at the premises for
21 forensic purposes; and
 - 22 (c) to search the premises for the kinds of evidential material
23 specified in the warrant, and to seize things of that kind
24 found at the premises; and
 - 25 (d) to seize other things found at the premises in the course of
26 the search that the executing officer or an officer assisting
27 believes on reasonable grounds to be:
 - 28 (i) evidential material; or
 - 29 (ii) things relevant to an indictable offence against an
30 Australian law;
- 31 if the executing officer or an officer assisting believes on
32 reasonable grounds that seizure of the things is necessary to
33 prevent their concealment, loss or destruction or their use in

- 1 committing the crime within the jurisdiction of the ICC or an
2 indictable offence against an Australian law; and
3 (e) to seize other things found at the premises in the course of
4 the search that the executing officer or an officer assisting
5 believes on reasonable grounds to be seizable items; and
6 (f) if the warrant so allows—to conduct an ordinary search or a
7 frisk search of a person at or near the premises if the
8 executing officer or an officer assisting suspects on
9 reasonable grounds that the person has any evidential
10 material or seizable items in his or her possession.
- 11 (2) If the warrant states that it may be executed only during particular
12 hours, it must not be executed outside those hours.

13 **[^]107 The things authorised by a search warrant in relation to a**
14 **person**

- 15 (1) A warrant in force in relation to a person authorises the executing
16 officer or an officer assisting:
17 (a) to:
18 (i) search the person as specified in the warrant; and
19 (ii) search things found in the possession of the person; and
20 (iii) search any recently used conveyance;
21 for things of the kind specified in the warrant; and
22 (b) to:
23 (i) seize things of that kind; and
24 (ii) record fingerprints from things; and
25 (iii) take forensic samples from things;
26 found in the course of the search; and
27 (c) to seize other things found in the possession of the person or
28 in or on the conveyance in the course of the search that the
29 executing officer or an officer assisting believes on
30 reasonable grounds to be:
31 (i) evidential material; or
32 (ii) things relevant to an indictable offence against an
33 Australian law;
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Section ^108

1 if the executing officer or a police officer assisting believes
2 on reasonable grounds that seizure of the things is necessary
3 to prevent their concealment, loss or destruction or their use
4 in committing the crime within the jurisdiction of the ICC or
5 an indictable offence against an Australian law; and
6 (d) to seize other things found in the course of the search that the
7 executing officer or a police officer assisting believes on
8 reasonable grounds to be seizable items.

9 (2) If the warrant states that it may be executed only during particular
10 hours, it must not be executed outside those hours.

11 (3) If the warrant authorises an ordinary search or a frisk search of a
12 person, a search of the person different from that so authorised
13 must not be done under the warrant.

14 **^108 Restrictions on personal searches**

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

17 **^109 Warrants may be issued by telephone etc.**

18 (1) A police officer may apply to a magistrate for a warrant by
19 telephone, telex, fax or other electronic means:
20 (a) in an urgent case; or
21 (b) if the delay that would occur if an application were made in
22 person would frustrate the effective execution of the warrant.

23 (2) The magistrate may require communication by voice to the extent
24 that is practicable in the circumstances.

25 (3) An application under this section must include all information
26 required to be provided in an ordinary application for a warrant,
27 but the application may, if necessary, be made before the
28 information is sworn.

29 (4) If an application is made to a magistrate under this section and the
30 magistrate, after considering the information and having received

Section ^110

- 1 and considered such further information (if any) as the magistrate
2 requires, is satisfied that:
- 3 (a) a warrant in the terms of the application should be issued
4 urgently; or
- 5 (b) the delay that would occur if an application were made in
6 person would frustrate the effective execution of the warrant;
7 the magistrate may complete and sign the same form of warrant as
8 would be issued under section ^104.

9 **^110 Formalities relating to warrants issued by telephone etc.**

- 10 (1) If the magistrate decides to issue the warrant under section ^109,
11 the magistrate is to inform the applicant, by telephone, telex, fax or
12 other electronic means, of the terms of the warrant and the day on
13 which and the time at which it was signed.
- 14 (2) The applicant must then complete a form of warrant in terms
15 substantially corresponding to those given by the magistrate,
16 stating on the form the name of the magistrate and the day on
17 which and the time at which the warrant was signed.
- 18 (3) The applicant must, not later than the day after the day of expiry of
19 the warrant or the day after the day on which the warrant was
20 executed, whichever is the earlier, give or send to the magistrate:
- 21 (a) the form of warrant completed by the applicant; and
22 (b) if the information referred to in subsection ^109(3) was not
23 sworn—that information duly sworn.
- 24 (4) The magistrate is to attach to the documents provided under
25 subsection (3) the form of warrant completed by the magistrate.
- 26 (5) If:
- 27 (a) it is material, in any proceedings, for a court to be satisfied
28 that the exercise of a power under a warrant issued under
29 section ^109 was duly authorised; and
30 (b) the form of warrant signed by the magistrate is not produced
31 in evidence;

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

4 **^111 Availability of assistance and use of force in executing a**
5 **warrant**

6 In executing a search warrant:

- 7 (a) the executing officer may obtain such assistance; and
8 (b) the executing officer, or a person who is a police officer
9 assisting in executing the warrant, may use such force against
10 persons and things; and
11 (c) a person who is not a police officer and has been authorised
12 to assist in executing the warrant may use such force against
13 things;

14 as is necessary and reasonable in the circumstances.

15 **^112 Copy of warrant to be shown to occupier etc.**

- 16 (1) If a search warrant in relation to premises is being executed and the
17 occupier of the premises, or another person who apparently
18 represents the occupier, is present at the premises, the executing
19 officer or an officer assisting must make available to that person a
20 copy of the warrant.
- 21 (2) If a search warrant in relation to a person is being executed, the
22 executing officer or an officer assisting must make available to that
23 person a copy of the warrant.
- 24 (3) If a person is searched under a search warrant in relation to
25 premises, the executing officer or an officer assisting must show
26 the person a copy of the warrant.
- 27 (4) The executing officer must identify himself or herself to the person
28 at the premises or the person being searched.

Section ^113

- 1 (5) The copy of the warrant referred to in subsections (1), (2) and (3)
2 need not include the signature of the magistrate who issued it or the
3 seal of the relevant court.

4 **^113 Specific powers available to officers executing warrants**

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

24 **^114 Use of equipment to examine or process things**

- 25 (1) The executing officer or an officer assisting may bring to the
26 warrant premises any equipment reasonably necessary for the
27 examination or processing of things found at the premises in order
28 to determine whether the things may be seized under the warrant.
- 29 (2) If:
30 (a) it is not practicable to examine or process the things at the
31 warrant premises; or
-

- 1 (b) the occupier of the premises consents in writing;
2 the things may be moved to another place so that the examination
3 or processing can be carried out in order to determine whether the
4 things may be seized under the warrant.
- 5 (3) If things are moved to another place for the purpose of examination
6 or processing under subsection (2), the executing officer must, if it
7 is practicable to do so:
8 (a) inform the occupier of the address of the place and the time
9 at which the examination or processing will be carried out;
10 and
11 (b) allow the occupier or his or her representative to be present
12 during the examination or processing.
- 13 (4) The executing officer or an officer assisting may operate
14 equipment already at the warrant premises to carry out the
15 examination or processing of a thing found at the premises in order
16 to determine whether it may be seized under the warrant if the
17 executing officer or police officer assisting believes on reasonable
18 grounds that:
19 (a) the equipment is suitable for the examination or processing;
20 and
21 (b) the examination or processing can be carried out without
22 damage to the equipment or thing.

23 **^115 Use of electronic equipment at premises**

- 24 (1) The executing officer or an officer assisting may operate electronic
25 equipment at the warrant premises to see whether evidential
26 material is accessible by doing so if he or she believes on
27 reasonable grounds that the operation of the equipment can be
28 carried out without damage to the equipment.
- 29 (2) If the executing officer or an officer assisting, after operating the
30 equipment, finds that evidential material is accessible by doing so,
31 he or she may:
32 (a) seize the equipment and any disk, tape or other associated
33 device; or

Part 6 Search, seizure and powers of arrest

Division 2 Provisions relating to execution of search warrants

Section 115

- 1 (b) if the material can, by using facilities at the premises, be put
2 in a documentary form—operate the facilities to put the
3 material in that form and seize the documents so produced; or
4 (c) if the material can be transferred to a disk, tape or other
5 storage device:
6 (i) that is brought to the premises; or
7 (ii) that is at the premises and the use of which for the
8 purpose has been agreed to in writing by the occupier of
9 the premises;
10 operate the equipment or other facilities to copy the material
11 to the storage device and take the storage device from the
12 premises.
- 13 (3) Equipment may be seized under paragraph (2)(a) only if:
14 (a) it is not practicable to put the material in documentary form
15 as mentioned in paragraph (2)(b) or to copy the material as
16 mentioned in paragraph (2)(c); or
17 (b) possession by the occupier of the equipment could constitute
18 an offence against an Australian law.
- 19 (4) If the executing officer or an officer assisting believes on
20 reasonable grounds that:
21 (a) evidential material may be accessible by operating electronic
22 equipment at the warrant premises; and
23 (b) expert assistance is required to operate the equipment; and
24 (c) if he or she does not take action under this subsection, the
25 material may be destroyed, altered or otherwise interfered
26 with;
27 he or she may do whatever is necessary to secure the equipment,
28 whether by locking it up, placing a guard or otherwise.
- 29 (5) The executing officer or an officer assisting must give notice to the
30 occupier of the premises of his or her intention to secure equipment
31 and of the fact that the equipment may be secured for up to 24
32 hours.
- 33 (6) The equipment may be secured:

- 1 (a) for up to 24 hours; or
2 (b) until the equipment has been operated by the expert;
3 whichever happens first.
- 4 (7) If the executing officer or an officer assisting believes on
5 reasonable grounds that the expert assistance will not be available
6 within 24 hours, he or she may apply to the magistrate who issued
7 the warrant for an extension of that period.
- 8 (8) The executing officer or an officer assisting must give notice to the
9 occupier of the premises of his or her intention to apply for an
10 extension, and the occupier is entitled to be heard in relation to the
11 application.
- 12 (9) Division 1 applies, with such modifications as are necessary, to
13 issuing an extension.

^116 Compensation for damage to electronic equipment

- 14
- 15 (1) This section applies if:
16 (a) damage is caused to equipment as a result of it being
17 operated as mentioned in section ^114 or ^115; or
18 (b) the data recorded on the equipment is damaged or programs
19 associated with its use are damaged or corrupted;
20 because of:
21 (c) insufficient care being exercised in selecting the person who
22 was to operate the equipment; or
23 (d) insufficient care being exercised by the person operating the
24 equipment.
- 25 (2) The Commonwealth must pay to the owner of the equipment, or
26 the user of the data or programs, such reasonable compensation for
27 the damage or corruption as they agree on.
- 28 (3) However, if the owner or user and the Commonwealth fail to
29 agree, the owner or user may institute proceedings against the
30 Commonwealth in the Federal Court for such reasonable amount of
31 compensation as the Court determines.

Section ^117

- 1 (4) In determining the amount of compensation payable, regard is to
2 be had to whether the occupier of the warrant premises or the
3 occupier's employees and agents, if they were available at the time,
4 provided any appropriate warning or guidance on the operation of
5 the equipment.
- 6 (5) Compensation is payable out of money appropriated by the
7 Parliament.
- 8 (6) For the purposes of subsection (1), *damage to data* includes
9 damage by erasure of data or addition of other data.

10 **^117 Copies of seized things to be provided**

- 11 (1) Subject to subsection (2), if an executing officer or officer assisting
12 seizes, under a warrant in relation to premises:
13 (a) a document, film, computer file or other thing that can be
14 readily copied; or
15 (b) a storage device the information in which can be readily
16 copied;
17 the executing officer or officer assisting must, if requested to do so
18 by the occupier of the warrant premises or another person who
19 apparently represents the occupier and is present when the warrant
20 is executed, give a copy of the thing or the information to that
21 person as soon as practicable after the seizure.
- 22 (2) Subsection (1) does not apply if:
23 (a) the thing was seized under paragraph ^115(2)(b) or (c); or
24 (b) possession by the occupier of the document, film, computer
25 file, thing or information could constitute an offence against
26 an Australian law.

27 **^118 Occupier entitled to be present during search**

- 28 (1) If a warrant in relation to premises is being executed and the
29 occupier of the premises or another person who apparently
30 represents the occupier is present at the premises, the person is
31 entitled to observe the search being conducted.

- 1 (2) The right to observe the search being conducted ceases if the
2 person impedes the search.
- 3 (3) This section does not prevent 2 or more areas of the premises being
4 searched at the same time.

5 **[^]119 Receipts for things seized under warrant**

- 6 (1) If a thing is seized under a warrant or moved under subsection
7 [^]114(2), the executing officer or an officer assisting must provide a
8 receipt for the thing.
- 9 (2) If 2 or more things are seized or removed, they may be covered in
10 the one receipt.

Section ^120

1

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

3 **^120 Searches without warrant in emergency situations**

- 4 (1) This section applies if a police officer suspects, on reasonable
5 grounds, that:
- 6 (a) evidential material is in or on a conveyance; and
 - 7 (b) it is necessary to exercise a power under subsection (2) in
8 order to prevent the material from being concealed, lost or
9 destroyed; and
 - 10 (c) it is necessary to exercise the power without the authority of
11 a search warrant because the circumstances are serious and
12 urgent.
- 13 (2) The police officer may:
- 14 (a) stop and detain the conveyance; and
 - 15 (b) search the conveyance, and any container in or on the
16 conveyance, for the material; and
 - 17 (c) seize the material if he or she finds it there.
- 18 (3) If, in the course of searching for the material, the police officer
19 finds other evidential material or a thing relevant to an offence
20 against an Australian law, the police officer may seize that material
21 or thing if he or she suspects, on reasonable grounds, that:
- 22 (a) it is necessary to seize it in order to prevent its concealment,
23 loss or destruction; and
 - 24 (b) it is necessary to seize it without the authority of a search
25 warrant because the circumstances are serious and urgent.
- 26 (4) The police officer must exercise his or her powers subject to
27 section ^121.

28 **^121 How a police officer exercises a power to search without**
29 **warrant**

30 When a police officer exercises a power under section ^120 in
31 relation to a conveyance, he or she:

- 1 (a) may use such assistance as is necessary; and
2 (b) must search the conveyance in a public place or in some
3 other place to which members of the public have ready
4 access; and
5 (c) must not detain the conveyance for longer than is necessary
6 and reasonable to search it and any container found in or on
7 the conveyance; and
8 (d) may use such force as is necessary and reasonable in the
9 circumstances, but must not damage the conveyance or any
10 container found in or on the conveyance by forcing open a
11 part of the conveyance or container unless:
12 (i) the person (if any) apparently in charge of the
13 conveyance has been given a reasonable opportunity to
14 open that part or container; or
15 (ii) it is not possible to give that person such an opportunity.

1

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

3 **^122 Power to enter premises to arrest person**

4

(1) Subject to subsection (2), if:

5

(a) a police officer has, under this Act or pursuant to a warrant issued under this Act, power to arrest a person; and

6

7

(b) the police officer believes on reasonable grounds that the person is on any premises;

8

9

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

10

11

12

13

(2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that:

14

15

16

17

(a) it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time; or

18

19

(b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidential material.

20

21

(3) In subsection (2):

22

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

23

24

25 **^123 Use of force in making arrest**

26

(1) A person must not, in the course of arresting another person under this Act or pursuant to a warrant issued under this Act, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.

27

28

29

30

- 1 (2) Without limiting the operation of subsection (1), a police officer
2 must not, in the course of arresting a person under this Act or
3 pursuant to a warrant issued under this Act:
- 4 (a) do anything that is likely to cause the death of, or grievous
5 bodily harm to, the person unless the police officer believes
6 on reasonable grounds that doing that thing is necessary to
7 protect life or to prevent serious injury to another person
8 (including the police officer); or
- 9 (b) if the person is attempting to escape arrest by fleeing—do
10 such a thing unless:
- 11 (i) the police officer believes on reasonable grounds that
12 doing that thing is necessary to protect life or to prevent
13 serious injury to another person (including the police
14 officer); and
- 15 (ii) the person has, if practicable, been called on to
16 surrender and the police officer believes on reasonable
17 grounds that the person cannot be apprehended in any
18 other manner.

19 **[^]124 Persons to be informed of grounds of arrest**

- 20 (1) A person who arrests another person under this Act or pursuant to a
21 warrant issued under this Act must inform the other person, at the
22 time of the arrest, of the crime in respect of which, or, if the other
23 person is arrested under section [^]171, the reason for which, the
24 other person is being arrested.
- 25 (2) It is sufficient if the other person is informed of the substance of
26 the crime or reason, and it is not necessary that this be done in
27 language of a precise or technical nature.
- 28 (3) Subsection (1) does not apply to the arrest of the other person if:
- 29 (a) the other person should, in the circumstances, know the
30 substance of the crime in respect of which, or the reason for
31 which, he or she is being arrested; or
- 32 (b) the other person's actions make it impracticable for the
33 person making the arrest to inform the other person of the

Section ^125

1 crime in respect of which, or the reason for which, he or she
2 is being arrested.

3 **^125 Power to conduct a frisk search of an arrested person**

4 A police officer who arrests a person under this Act or pursuant to
5 a warrant issued under this Act, or is present at such an arrest, may,
6 if the police officer suspects on reasonable grounds that it is
7 prudent to do so in order to ascertain whether the person is carrying
8 any seizable items:

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

12 **^126 Power to conduct an ordinary search of an arrested person**

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

- 17 (a) evidential material relating to the crime to which the person's
18 custody relates; or
19 (b) a seizable item;
20 conduct an ordinary search of the person at or soon after the time
21 of arrest, and seize any such thing found as a result of the search.

22 **^127 Power to conduct search of arrested person's premises**

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

- 27 (a) evidential material relating to the crime to which the person's
28 custody relates; or
29 (b) seizable items.

1 ^128 Power to conduct an ordinary search or strip search

- 2 (1) If a person who has been arrested under this Act or pursuant to a
3 warrant issued under this Act is brought to a police station, a police
4 officer may:
- 5 (a) if an ordinary search of the person has not been conducted—
6 conduct an ordinary search of the person; or
7 (b) subject to this section, conduct a strip search of the person.
- 8 (2) A strip search may be conducted if:
- 9 (a) a police officer suspects on reasonable grounds that:
- 10 (i) the person has in his or her possession evidential
11 material relating to the crime to which the person's
12 custody relates; or
13 (ii) the person has in his or her possession a seizable item;
14 or
15 (iii) a visual inspection of the person's body will provide
16 evidence of the person's involvement in that offence;
17 and
- 18 (b) the police officer suspects on reasonable grounds that it is
19 necessary to conduct a strip search of the person in order to
20 recover that thing or to discover that evidence; and
21 (c) a police officer of the rank of superintendent or higher has
22 approved the conduct of the search.
- 23 (3) Subject to section ^129, a strip search may also be conducted if the
24 person consents in writing.
- 25 (4) Subject to section ^129, a strip search may be conducted in the
26 presence of a medical practitioner, who may assist in the search.
- 27 (5) The approval may be obtained by telephone, telex, fax or other
28 electronic means.
- 29 (6) A police officer who gives or refuses to give an approval for the
30 purposes of paragraph (2)(c) must make a record of the decision
31 and of the reasons for the decision.

Section ^129

1 (7) Such force as is necessary and reasonable in the circumstances may
2 be used to conduct a strip search under subsection (2).

3 (8) Any item of a kind referred to in subparagraph (2)(a)(i) or (ii) that
4 is found during a strip search may be seized.

5 **^129 Rules for conduct of strip search**

6 (1) A strip search:

7 (a) must be conducted in a private area; and

8 (b) must be conducted by a police officer who is of the same sex
9 as the person being searched; and

10 (c) subject to subsections (3) and (4), must not be conducted in
11 the presence or view of a person who is of the opposite sex to
12 the person being searched; and

13 (d) must not be conducted in the presence or view of a person
14 whose presence is not necessary for the purposes of the
15 search; and

16 (e) must not be conducted on a person who is under 10 years of
17 age; and

18 (f) if the person being searched is at least 10 but under 18 years
19 of age, or is incapable of managing his or her affairs:

20 (i) may only be conducted if a court orders that it be
21 conducted; and

22 (ii) must be conducted in the presence of a parent or
23 guardian of the person being searched or, if that is not
24 acceptable to the person, in the presence of another
25 person (other than a police officer) who is capable of
26 representing the interests of the person and, as far as is
27 practicable in the circumstances, is acceptable to the
28 person; and

29 (g) must not involve a search of a person's body cavities; and

30 (h) must not involve the removal of more garments than the
31 police officer conducting the search believes on reasonable
32 grounds to be necessary to determine whether the person has
33 in his or her possession the item searched for or to establish

- 1 the person's involvement in the crime to which the person's
2 custody relates; and
- 3 (i) must not involve more visual inspection than the police
4 officer believes on reasonable grounds to be necessary to
5 establish the person's involvement in the crime to which the
6 person's custody relates.
- 7 (2) In deciding whether to make an order referred to in
8 paragraph (1)(f), the court must have regard to:
- 9 (a) the serious nature of the crime to which the person's custody
10 relates; and
- 11 (b) the age or any disability of the person; and
- 12 (c) such other matters as the court thinks fit.
- 13 (3) A strip search may be conducted in the presence of a medical
14 practitioner of the opposite sex to the person searched if a medical
15 practitioner of the same sex as the person being searched is not
16 available within a reasonable time.
- 17 (4) Paragraph (1)(c) does not apply to a parent, guardian or personal
18 representative of the person being searched if the person being
19 searched has no objection to the person being present.
- 20 (5) If any of a person's garments are seized as a result of a strip search,
21 the person must be provided with adequate clothing.

1

2 **Division 5—General**

3 **^130 Conduct of ordinary searches and frisk searches**

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

9 **^131 Announcement before entry**

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

22 **^132 Offences relating to telephone warrants**

- 23 A person must not:
- 24 (a) state in a document that purports to be a form of warrant
25 under section ^109 the name of a magistrate unless that
26 magistrate issued the warrant; or
27 (b) state on a form of warrant under that section a matter that, to
28 the person's knowledge, departs in a material particular from
29 the form authorised by the magistrate; or

- 1 (c) purport to execute, or present to a person, a document that
2 purports to be a form of warrant under that section that:
3 (i) the person knows has not been approved by a magistrate
4 under that section; or
5 (ii) the person knows to depart in a material particular from
6 the terms authorised by a magistrate under that section;
7 or
8 (d) send to a magistrate a form of warrant under that section that
9 is not the form of warrant that the person purported to
10 execute.

11 Penalty: Imprisonment for 2 years.

12 **^133 Retention of things seized**

- 13 (1) If a police officer seizes a thing under this Part, he or she must
14 deliver it into the custody and control of the Commissioner of
15 Police of the Australian Federal Police.
- 16 (2) Subject to subsection (5), the Commissioner must:
17 (a) inform the Attorney-General that the thing has been so
18 delivered; and
19 (b) retain the thing pending the Attorney-General's direction
20 under subsection (3) about how to deal with the thing; and
21 (c) comply with any such direction that the Attorney-General
22 gives.
- 23 (3) The Attorney-General may, by written notice, give the
24 Commissioner a direction about how to deal with the thing.
- 25 (4) Without limiting the directions that may be given, a direction may
26 require the Commissioner to send the thing to the ICC.
- 27 (5) The Attorney-General must direct the Commissioner to return the
28 thing if:
29 (a) the reason for its seizure no longer exists; or
30 (b) it is decided that the thing is not to be used in evidence by the
31 ICC or in respect of criminal proceedings in Australia; or

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- 1 (c) the period of 60 days after its seizure ends;
2 whichever first occurs, unless the thing is forfeited or forfeitable to
3 the Commonwealth or is the subject of a dispute as to ownership.

4 **^134 Magistrate may permit a thing to be retained**

- 5 (1) If a thing is seized under section ^133 and:
6 (a) before the end of 60 days after the seizure; or
7 (b) before the end of a period previously specified in an order of
8 a magistrate under this section;
9 proceedings in respect of which the thing may afford evidence
10 have not commenced, the Commissioner of Police of the
11 Australian Federal Police may apply to a magistrate for an order
12 that he or she may retain the thing for a further period.
- 13 (2) If the magistrate is satisfied that it is necessary for the
14 Commissioner to continue to retain the thing:
15 (a) for the purposes of an investigation as to whether an offence
16 has been committed; or
17 (b) to enable evidence of an offence to be secured for the
18 purposes of a prosecution;
19 the magistrate may order that the Commissioner may retain the
20 thing for a period specified in the order.
- 21 (3) Before making the application, the Commissioner must:
22 (a) take reasonable steps to discover who has an interest in the
23 retention of the thing; and
24 (b) if it is practicable to do so, notify each person who the
25 Commissioner believes has such an interest that the
26 application has been made.

1

2 **Part 7—Information provided in confidence by**
3 **third party**
4

5 **[^]135 Disclosure of information provided in confidence by third**
6 **party**

- 7 (1) If the ICC requests the giving of information or documents that
8 were provided to Australia on a confidential basis by a foreign
9 country or by an intergovernmental or international organisation
10 (in either case referred to as the *originator*), the Attorney-General
11 must seek the consent of the originator before giving the
12 information or documents to the ICC.
- 13 (2) If the originator is a party to the Statute that consents to disclosure
14 of the information or documents, the Attorney-General must,
15 subject to article 72 of the Statute, give the information or
16 documents to the ICC.
- 17 (3) If the originator is a party to the Statute that undertakes to resolve
18 the issue of disclosure of the information or documents with the
19 ICC under article 73 of the Statute, the Attorney-General must
20 inform the ICC of the undertaking.
- 21 (4) If the originator is not a party to the Statute and refuses to consent
22 to disclosure of the information or documents, the
23 Attorney-General must inform the ICC that he or she is unable to
24 give the information or documents because of an existing
25 obligation of confidentiality to the originator.

26 **[^]136 Request for Australia's consent to disclosure**

- 27 If a request is received from a foreign country for Australia's
28 consent to the disclosure to the ICC of information or documents
29 that had been disclosed by Australia to the country on a
30 confidential basis, the Attorney-General must either:
31 (a) consent to the disclosure; or

Section ^136

- 1 (b) undertake to resolve the matter with the ICC as provided in
2 Part 8.

1

Part 8—Protection of Australia's national security interests3
4**[^]137 How national security issues are to be dealt with**

If an issue relating to Australia's national security interests arises at any stage of any proceedings before the ICC, the issue must be dealt with in the manner provided in article 72 of the Statute and this Part.

[^]138 Request for cooperation involving national security

- (1) If a request for cooperation appears to relate to the disclosure of any information or documents that would, in the Attorney-General's opinion, prejudice Australia's national security interests, the request must be dealt with in accordance with the procedure specified in sections [^]141 and [^]142.
- (2) If, after the procedure specified in sections [^]141 and [^]142 is followed, the request for cooperation is not able to be resolved, the Attorney-General may refuse the request or decline to authorise the disclosure.

[^]139 Request to disclose information or documents involving national security

- (1) This section applies if a person who has been requested to disclose information or documents:
- (a) refuses to do so on the ground that disclosure would prejudice Australia's national security interests; or
 - (b) refers the matter to the Attorney-General on that ground.
- (2) The Attorney-General must determine whether or not he or she is of the opinion that the disclosure would prejudice Australia's national security interests.

Section ^140

- 1 (3) If the Attorney-General forms the opinion that the disclosure
2 would prejudice Australia's national security interests, the request
3 for disclosure must be dealt with in accordance with the procedure
4 specified in sections ^141 and ^142.
- 5 (4) If, after the procedure specified in sections ^141 and ^142 is
6 followed, the request for disclosure is not able to be resolved, the
7 Attorney-General may refuse the request or decline to authorise the
8 disclosure.

9 **^140 Other situations involving national security**

- 10 (1) If, in any circumstances other than those mentioned in sections
11 ^138 and ^139, the Attorney-General is of the opinion that the
12 disclosure of information or documents to the ICC would prejudice
13 Australia's national security interests, the matter must be dealt with
14 in accordance with the procedure specified in section ^141 and
15 subsection ^142(1).
- 16 (2) Without limiting subsection (1), if:
- 17 (a) the Attorney-General learns that information or documents
18 relating to Australia are being, or are likely to be, disclosed at
19 any stage of the proceedings before the ICC and intervenes in
20 accordance with paragraph 4 of article 72 of the Statute; and
- 21 (b) after the procedure specified in section ^141 and subsection
22 ^142(1) is followed:
- 23 (i) the matter is not resolved; and
- 24 (ii) the ICC has not made an order for disclosure under
25 paragraph 7(b)(i) of article 72 of the Statute;
- 26 the Attorney-General may decline to authorise the disclosure.

27 **^141 Consultation with ICC required**

28 The Attorney-General must consult with the ICC and, if
29 appropriate, the defence, in accordance with paragraph 5 of article
30 72 of the Statute.

1 ^142 Procedure where no resolution

- 2 (1) If, after the consultation, the Attorney-General decides that there
3 are no means or conditions under which the information or
4 documents could be disclosed without prejudice to Australia's
5 national security interests, the Attorney-General must notify the
6 ICC, in accordance with paragraph 6 of article 72 of the Statute, of
7 the specific reasons for his or her decision unless a specific
8 description of the reasons would itself result in prejudice to
9 Australia's national security interests.
- 10 (2) If:
- 11 (a) the ICC determines that the disclosure is relevant and
12 necessary for the establishment of the guilt or innocence of
13 the accused; and
- 14 (b) the issue of disclosure arises in the circumstances specified in
15 section ^138 or ^139; and
- 16 (c) the Attorney-General is of the opinion that Australia's
17 national security interests would be prejudiced by the
18 disclosure; and
- 19 (d) the ICC requests further consultations for the purpose of
20 considering the representations, which may include hearings
21 in camera and ex parte;
- 22 the Attorney-General must consult with the ICC.

1

2 **Part 9—Transportation of persons in custody**
3 **through Australia**
4

5 **^143 Transportation of persons in custody through Australia**

- 6 (1) This Part applies to a person (the *transportee*) who:
7 (a) is being surrendered to the ICC by a foreign country under
8 article 89 of the Statute; or
9 (b) has been sentenced to imprisonment by the ICC and is being
10 transferred to or from the ICC, or between foreign countries,
11 in connection with the sentence.
- 12 (2) Subject to this section, the Attorney-General must authorise the
13 transportation of the transportee through Australia in the custody of
14 a person specified by the Attorney-General if the ICC has, in
15 accordance with section ^9, made a request for the transportation
16 that contains:
17 (a) a description of the transportee; and
18 (b) a brief statement of the facts of the case and their legal
19 characterisation; and
20 (c) the warrant for the arrest and surrender of the transportee.
- 21 (3) The Attorney-General must not authorise the transportation
22 through Australia of a person referred to in paragraph (1)(a) if the
23 Attorney-General reasonably believes that the transportation
24 through Australia would impede or delay the surrender of the
25 person to the ICC.
- 26 (4) No authorisation is required for the transportation of the
27 transportee through Australia by air if no landing of the aircraft is
28 scheduled to take place in Australia.
- 29 (5) However, if an unscheduled landing of an aircraft carrying the
30 transportee takes place in Australia, the following provisions have
31 effect:
32 (a) the Attorney-General must:
-

- 1 (i) make an order directing that the transportee be detained
2 in custody for a period of 96 hours from the time of the
3 landing; and
4 (ii) seek from the ICC a request for the transportation of the
5 transportee through Australia;
6 (b) if the Attorney-General receives such a request within that
7 period—the transportation of the transportee may continue
8 and the transportee is to continue to be detained in custody
9 during the transportation;
10 (c) if the Attorney-General does not receive such a request
11 within that period—the transportee must be released from
12 custody.

Section ^144

1

2 **Part 10—Enforcement in Australia of reparation**
3 **orders made and fines imposed by ICC**
4

5 **^144 Assistance with enforcement of orders for reparation to**
6 **victims**

- 7 (1) This section applies if:
8 (a) the ICC:
9 (i) makes an order under article 75 of the Statute requiring
10 reparation; and
11 (ii) requests that the order be enforced as if article 109 of
12 the Statute were applicable; and
13 (b) neither the conviction in respect of which the order was made
14 nor the order requiring reparation is subject to appeal or
15 further appeal in the ICC.
- 16 (2) The Attorney-General is to execute the request by authorising, by
17 written notice in the statutory form, the DPP to apply for the
18 registration of the order in an appropriate court.

19 **^145 Assistance with enforcement of orders imposing fines**

- 20 (1) This section applies if:
21 (a) the ICC:
22 (i) orders payment of a fine under paragraph 2(a) of article
23 77 of the Statute; and
24 (ii) requests that the order be enforced in accordance with
25 article 109 of the Statute; and
26 (b) neither the conviction in respect of which the order was made
27 nor the order for payment of the fine is subject to appeal or
28 further appeal in the ICC.
- 29 (2) The Attorney-General is to execute the request by authorising, by
30 written notice in the statutory form, the DPP to apply for the
31 registration of the order in an appropriate court.
-

1 [^]146 **Registration of order**

- 2 (1) If the DPP applies to a court for registration of an order in
3 accordance with an authorisation under section [^]144 or [^]145, the
4 court must register the order and must direct the DPP to publish
5 notice of the registration in the manner and within the period that
6 the court considers appropriate.
- 7 (2) An order is to be registered in a court by the registration, under the
8 rules of the court, of a copy of the order authenticated by the ICC.
- 9 (3) Subject to subsection [^]147(3), a faxed copy of an authenticated
10 copy of an order is, for the purposes of subsection (2) of this
11 section, taken to be the same as the authenticated copy.

12 [^]147 **Effect of order**

- 13 (1) An order referred to in section [^]144 that is registered in a court has
14 effect, and may be enforced, as if it were an order for the payment
15 of money made by the court at the time of the registration.
- 16 (2) An order referred to in section [^]145 that is registered in a court has
17 effect, and may be enforced, as if it were an order imposing a fine
18 made by the court at the time of the registration.
- 19 (3) A registration effected by registering a faxed copy of an
20 authenticated copy of an order ceases to have effect after 21 days
21 unless the authenticated copy of the order has been registered by
22 then.

Section ^148

1

2 **Part 11—Forfeiture of proceeds of international**
3 **crimes**

4

5 **^148 Requests for enforcement of forfeiture orders**

6

(1) This section applies if:

7

(a) the ICC requests the Attorney-General to make arrangements
8 for the enforcement of a forfeiture order made in relation to
9 property that is believed to be in Australia; and

10

(b) the Attorney-General is satisfied:

11

(i) that a person has been convicted by the ICC of the
12 crime within the jurisdiction of the ICC to which the
13 order relates; and

14

(ii) the conviction and the order are not subject to appeal or
15 further appeal in the ICC.

16

(2) The Attorney-General is to execute the request by authorising, by
17 written notice in the statutory form, the DPP to apply for the
18 registration of the order in the Supreme Court of a State specified
19 in the notice.

20

^149 Registration of order

21

(1) If the DPP applies to a court for registration of an order in
22 accordance with an authorisation under section ^148, the court
23 must register the order.

24

(2) An order is to be registered in a court by the registration, under the
25 rules of the court, of a copy of the order authenticated by the ICC.

26

(3) Subject to subsection (4), a faxed copy of an authenticated copy of
27 an order is, for the purposes of subsection (2) of this section, taken
28 to be the same as the authenticated copy.

- 1 (4) A registration effected by registering a faxed copy of an
2 authenticated copy of a forfeiture order ceases to have effect after
3 21 days unless the authenticated copy has been registered by then.

4 Note: The effect and enforcement of a forfeiture order registered in a court
5 under this Part is dealt with in Division 2B of Part II of the *Proceeds*
6 *of Crime Act 1987*.

1

2 **Part 12—Enforcement in Australia of sentences**
3 **imposed by ICC**

4 **Division 1—Preliminary**

5 **^150 Australia may agree to act as State of enforcement**

- 6 (1) The Attorney-General may notify the ICC that Australia is willing
7 to allow persons who are ICC prisoners to serve their sentences in
8 Australia subject to such conditions (the *enforcement conditions*)
9 as Australia imposes and are specified in the instrument of
10 notification.
- 11 (2) The enforcement conditions that may be imposed include, but are
12 not limited to:
- 13 (a) a condition that, unless the Attorney-General determines that
14 it is not necessary in a particular case, the ICC prisoner or his
15 or her representative has consented in writing to the sentence
16 being served in Australia; and
 - 17 (b) a condition that the appropriate Ministerial consent has been
18 given to the sentence being served in Australia; and
 - 19 (c) a condition that any appeal or application for revision in
20 respect of the sentence or in respect of the conviction on
21 which it is based has been heard and determined or the period
22 for bringing such an appeal or application has expired; and
 - 23 (d) a condition that:
 - 24 (i) on the day of receipt by Australia of the relevant
25 designation under article 103 of the Statute, at least 6
26 months of the ICC prisoner's sentence remains to be
27 served; or
 - 28 (ii) if a shorter period remains to be served on that day, the
29 Attorney-General has determined that, in the
30 circumstances, transfer of the ICC prisoner to Australia
31 for a shorter period is acceptable.

- 1 (3) The Attorney-General may, at any time, notify the ICC that
2 Australia withdraws a condition specified in the instrument of
3 notification referred to in subsection (1).

4 **^151 Withdrawal of agreement to act as State of enforcement**

- 5 (1) If the Attorney-General notifies the ICC under section ^150, the
6 Attorney-General may, at any time, withdraw the notification by
7 notifying the ICC that Australia is no longer willing to allow ICC
8 prisoners to serve their sentences in Australia.
- 9 (2) Any notification given under subsection (1) does not affect the
10 enforcement of sentences for which the Attorney-General had,
11 before the notification was given, accepted the designation given to
12 Australia by the ICC under section ^154.

13 **^152 Designation of Australia as place for service of sentence**

- 14 (1) If:
15 (a) the Attorney-General has given a notification under section
16 ^150 and has not withdrawn the notification under section
17 ^151; and
18 (b) the ICC imposes a sentence of imprisonment on a person
19 convicted of a crime within the jurisdiction of the ICC; and
20 (c) the ICC designates Australia, under article 103 of the Statute,
21 as the country in which the sentence is to be served;
22 the Attorney-General is to consider whether to accept the
23 designation.
- 24 (2) Before accepting the designation, the Attorney-General may
25 request the ICC to provide the Attorney-General with any relevant
26 information that will enable the Attorney-General to assess
27 whether the designation should be accepted.

28 **^153 Governmental consent to acceptance of designation**

- 29 (1) Before accepting the designation, the Attorney-General is to
30 determine the State in which it would be most appropriate for the
-

Section ^154

1 ICC prisoner to serve the sentence of imprisonment imposed by the
2 ICC and is to seek the consent of the State Minister concerned.

3 (2) The Attorney-General is to provide the State Minister with
4 particulars of any information that the ICC has given to the
5 Attorney-General.

6 (3) As soon as possible after receiving the particulars, the State
7 Minister is to inform the Attorney-General in writing whether the
8 State Minister consents to the sentence being served in the State.

9 (4) If the State Minister refuses to consent to the sentence being served
10 in the State, the Attorney-General may seek the consent of another
11 State Minister to the sentence being served in the State concerned.

12 (5) If a State Minister consents to the sentence being served in the
13 State, that Minister is to notify the Attorney-General of:

14 (a) the prison, or hospital or other place, in which the ICC
15 prisoner is to serve the sentence in accordance with this Part
16 in the State; and

17 (b) any other matters that the State Minister considers relevant to
18 the service of the sentence in the State.

19 Note: An ICC prisoner may be transferred from the prison, hospital or other
20 place in the State in which he or she begins to serve a sentence of
21 imprisonment to another prison, hospital or other place in the State or
22 to a prison, hospital or other place in another State (see paragraphs
23 ^162(5)(c), (d) and (h)).

24 **^154 Acceptance of designation**

25 (1) The Attorney-General may accept the designation if:

26 (a) the Attorney-General is satisfied that the ICC has agreed to
27 the enforcement conditions; and

28 (b) in the case of a prisoner who is not an Australian citizen—the
29 Minister for Immigration and Multicultural Affairs has
30 consented to the sentence of imprisonment being served by
31 the ICC prisoner in Australia; and

32 (c) a State Minister has consented to the sentence of
33 imprisonment being served by the ICC prisoner in the State.

- 1 (2) When the Attorney-General notifies the ICC of the acceptance of
2 the designation, the Attorney-General is also to notify the ICC
3 whether the written consent of the ICC prisoner or his or her
4 representative to the sentence being served in Australia is required
5 and, if such a consent is required, ask the ICC to inform the
6 Attorney-General when it has been obtained.

1

2 **Division 2—Transfer to Australia of ICC prisoners**

3 **[^]155 Issue of warrant for transfer to Australia**

4 The Attorney-General may issue a warrant, by writing in the
5 statutory form, for the transfer of an ICC prisoner to Australia if:
6 (a) the ICC's agreement to the enforcement conditions; and
7 (b) the written consent of the prisoner or his or her representative
8 to the sentence being served in Australia (if the
9 Attorney-General considers such consent is necessary); and
10 (c) the appropriate Ministerial consent to the sentence being
11 served in Australia;
12 have been obtained.

13 **[^]156 Warrants for transfer to Australia**

14 (1) A warrant for the transfer of an ICC prisoner to Australia
15 authorises the transfer of the prisoner to Australia to serve the
16 sentence of imprisonment imposed by the ICC in accordance with
17 the enforcement conditions.

18 (2) A warrant must:

19 (a) specify the name and date of birth of the prisoner to be
20 transferred; and
21 (b) specify the country from which the prisoner is to be
22 transferred; and
23 (c) state that:

24 (i) the ICC's agreement to the enforcement conditions; and
25 (ii) the written consent of the prisoner or his or her
26 representative to the sentence being served in Australia
27 (if the Attorney-General considers such consent is
28 necessary); and
29 (iii) the appropriate Ministerial consent to the sentence being
30 served in Australia;
31 have been obtained.

- 1 (3) The warrant is:
- 2 (a) to authorise an escort officer to collect the prisoner from a
- 3 place (whether in Australia or a foreign country) specified in
- 4 the warrant; and
- 5 (b) if the place is in a foreign country—to authorise:
- 6 (i) the escort officer to transport the prisoner in custody to
- 7 Australia for surrender to a person appointed by the
- 8 Attorney-General to receive the prisoner; and
- 9 (ii) if appropriate, the appointed person to escort the
- 10 prisoner to the prison, or hospital or other place, in
- 11 Australia where the prisoner is to begin to serve the
- 12 sentence of imprisonment in accordance with this Part;
- 13 and
- 14 (c) if the place is in Australia—to authorise the escort officer to
- 15 escort the prisoner to the prison, or hospital or other place, in
- 16 Australia where the prisoner is to begin to serve the sentence
- 17 of imprisonment in accordance with this Part; and
- 18 (d) if the prisoner is to be escorted to a prison—to require the
- 19 superintendent of the prison to take the prisoner into custody
- 20 to be dealt with in accordance with this Part; and
- 21 (e) if the prisoner is to be escorted to a hospital or other place—
- 22 to authorise his or her detention in the hospital or place to be
- 23 dealt with in accordance with this Part.
- 24 Note: An ICC prisoner may be transferred from the prison, hospital or other
- 25 place in the State in which he or she begins to serve a sentence of
- 26 imprisonment to another prison, hospital or other place in the State or
- 27 to a prison, hospital or other place in another State (see paragraphs
- 28 [^]162(5)(e), (d) and (h)).
- 29 (4) The Attorney-General may give any direction or approval that is
- 30 necessary to ensure that the warrant is executed in accordance with
- 31 its terms.

[^]157 Cancellation of warrant

- 32 (1) The Attorney-General may cancel a warrant for the transfer of an
- 33 ICC prisoner to Australia at any time before the prisoner leaves the
- 34 foreign country in which he or she is being held in custody.
- 35

Part 12 Enforcement in Australia of sentences imposed by ICC

Division 2 Transfer to Australia of ICC prisoners

Section ¹⁵⁷

- 1 (2) Without limiting the grounds on which the Attorney-General may
2 cancel a warrant for the transfer of an ICC prisoner to Australia, it
3 must be cancelled if:
4 (a) the ICC cancels the designation of Australia or decides not to
5 accept an enforcement condition; or
6 (b) the Attorney-General, the Minister for Immigration and
7 Multicultural Affairs or a State Minister withdraws consent;
8 or
9 (c) where the consent of the prisoner or his or her representative
10 to the sentence being served in Australia was required by the
11 Attorney-General—the prisoner or representative withdraws
12 consent.

1

2 **Division 3—Enforcement of sentences**

3 **[^]158 Sentence enforcement in Australia**

4 The Attorney-General may determine that a sentence of
5 imprisonment imposed on an ICC prisoner by the ICC be enforced
6 on transfer of the prisoner to Australia under this Part.

7 **[^]159 Duration and nature of enforced sentence**

8 (1) The sentence of imprisonment to be enforced must not be harsher,
9 in legal nature, than the sentence of imprisonment imposed by the
10 ICC.

11 (2) Without limiting subsection (1), the sentence to be enforced under
12 this Part:

13 (a) must not be for a longer duration than the sentence imposed
14 by the ICC; and

15 (b) must not be of a kind that involves a more severe form of
16 deprivation of liberty than the sentence of imprisonment
17 imposed by the ICC.

18 **[^]160 Directions about enforcement of sentence**

19 (1) The Attorney-General may, subject to section [^]159, give such
20 directions as the Attorney-General considers appropriate as to the
21 duration and legal nature of the sentence of imprisonment as it is to
22 be enforced under this Part.

23 (2) However, a direction reducing the sentence may only be given in
24 accordance with a decision of the ICC under article 110 of the
25 Statute.

26 (3) Without limiting subsection (1), directions may be given, in respect
27 of a mentally impaired prisoner, as to any review to be undertaken
28 of his or her mental condition and treatment to be provided to him
29 or her following transfer.

Section ^161

- 1 (4) For the purpose of forming an opinion or exercising a discretion
2 under this section, the Attorney-General may inform himself or
3 herself as he or she thinks fit and, in particular, may have regard to
4 the following:
- 5 (a) any relevant decisions of the ICC;
 - 6 (b) any views expressed by any State Minister concerned with
7 the proposed transfer;
 - 8 (c) any views expressed by prison authorities of any State;
 - 9 (d) the legal nature of the sentence of imprisonment that might
10 have been imposed if the acts or omissions constituting the
11 crime within the jurisdiction of the ICC had been committed
12 in Australia;
 - 13 (e) any limitations or requirements arising under the Statute in
14 relation to the way in which a sentence of imprisonment
15 imposed by the ICC may be enforced in Australia.

16 **^161 No appeal or review of sentence of imprisonment imposed by**
17 **ICC or of sentence enforcement decisions of**
18 **Attorney-General**

- 19 (1) On transfer of an ICC prisoner to Australia under this Part, no
20 appeal or review lies in Australia against the sentence of
21 imprisonment imposed by the ICC.
- 22 (2) No appeal or review lies against a decision of the Attorney-General
23 about the enforcement in Australia under this Part of a sentence of
24 imprisonment imposed by the ICC.

25 **^162 ICC prisoner transferred to Australia to be regarded as a**
26 **federal prisoner**

- 27 (1) For the purpose of enforcement in Australia of a sentence of
28 imprisonment by the ICC, on transfer of the ICC prisoner to
29 Australia under this Part:
- 30 (a) the sentence is taken to be a federal sentence of
31 imprisonment; and
 - 32 (b) the prisoner is taken to be a federal prisoner.

- 1 (2) Any period of the sentence of imprisonment as originally imposed
2 by the ICC that was served by the ICC prisoner before the transfer
3 is taken to have been served under the sentence of imprisonment as
4 it is enforced under this Part.
- 5 (3) An ICC prisoner who is transferred to Australia under this Part
6 may, while serving a sentence of imprisonment imposed by the
7 ICC that is enforced under this Part, be detained in a prison, or in a
8 hospital or other place, in a State.
- 9 (4) Subject to subsection (6), any relevant Australian law, or practice
10 or procedure lawfully observed, about the detention of prisoners
11 applies in relation to the ICC prisoner on or after his or her transfer
12 to Australia to the extent that it is capable of applying concurrently
13 with this Part.
- 14 (5) Without limiting subsection (4), Australian law, and practice and
15 procedure, relating to the following matters are applicable to an
16 ICC prisoner who is transferred to Australia under this Part:
- 17 (a) conditions of imprisonment and treatment of prisoners;
 - 18 (b) classification and separation of prisoners;
 - 19 (c) removal of prisoners from one prison to another;
 - 20 (d) removal of prisoners between prisons and hospitals or other
21 places or between one hospital or other place and another;
 - 22 (e) treatment of mentally impaired prisoners;
 - 23 (f) subject to subsection (6), eligibility for participation in prison
24 programs;
 - 25 (g) temporary absence from prison (for example, to work or seek
26 work, to attend a funeral or visit a relative suffering a serious
27 illness or to attend a place of education or training);
 - 28 (h) transfer of prisoners between States.
- 29 (6) Australian law, and practice and procedure, relating to release of
30 prisoners on parole or release under a pre-release permit scheme
31 (however called) are not applicable to an ICC prisoner who is
32 transferred to Australia under this Part.

Section ¹⁶³

1 **¹⁶³ Other matters relating to ICC prisoners**

- 2 (1) An ICC prisoner has the right to communicate on a confidential
3 basis with the ICC, without impediment from any person.
- 4 (2) A Judge of the ICC or a member of the staff of the ICC may visit
5 an ICC prisoner for the purpose of hearing any representations by
6 the prisoner without the presence of any other person except a
7 representative of the prisoner.
- 8 (3) The Attorney-General must advise the ICC if an ICC prisoner is
9 transferred from a prison to a hospital or other place, or from a
10 hospital or other place to another hospital or other place.

11 **¹⁶⁴ Pardon, amnesty or commutation of sentences of**
12 **imprisonment imposed on ICC prisoners transferred to**
13 **Australia**

- 14 (1) Subject to the prior agreement of the ICC, during the period in
15 which a sentence of imprisonment is served in Australia by an ICC
16 prisoner transferred to Australia under this Part, the prisoner may
17 be pardoned or granted any amnesty or commutation of sentence of
18 imprisonment that could be granted under Australian law if the
19 sentence of imprisonment had been imposed for an offence against
20 an Australian law.
- 21 (2) The Attorney-General is to direct, by written notice in the statutory
22 form, that an ICC prisoner must not be detained in custody or
23 otherwise be subjected to detention or supervision in Australia
24 under a sentence of imprisonment imposed by the ICC and
25 enforced under this Part if, during the period in which the sentence
26 is served in Australia:
- 27 (a) the ICC notifies the Attorney-General that the ICC prisoner
28 may be pardoned or granted amnesty or commutation of
29 sentence of imprisonment under an Australian law and the
30 ICC prisoner is so pardoned or granted such amnesty or
31 commutation of sentence of imprisonment; or
- 32 (b) the ICC notifies the Attorney-General that the ICC prisoner's
33 conviction has been quashed or otherwise nullified or that the

1 prisoner has been pardoned or granted commutation of
2 sentence of imprisonment by the ICC.

3 **^165 ICC prisoner may apply to be transferred from Australia to a**
4 **foreign country**

5 An ICC prisoner serving a sentence in Australia may, at any time,
6 apply to the ICC to be transferred from Australia to complete the
7 service of the sentence in a foreign country.

8 **^166 How ICC prisoner is to be transferred**

- 9 (1) This section applies if an ICC prisoner is to be transferred from
10 Australia to a foreign country to complete the service of his or her
11 sentence.
- 12 (2) The Attorney-General may issue a warrant, by writing in the
13 statutory form, for the transfer of the prisoner.
- 14 (3) The warrant authorises the transfer of the prisoner from Australia
15 to the foreign country to complete the service of his or her
16 sentence.
- 17 (4) The warrant must:
- 18 (a) specify the name and date of birth of the prisoner; and
19 (b) state that the prisoner is to be transferred from Australia to
20 the foreign country to complete the service of his or her
21 sentence; and
22 (c) authorise an escort officer to collect the prisoner from the
23 prison in which he or she is held in custody, or from the
24 hospital or other place where he or she is detained, and
25 transport the prisoner in custody to the foreign country; and
26 (d) require the superintendent of the prison, or the person in
27 charge of the hospital or other place, to release the prisoner
28 into the custody of the escort officer.

29 **^167 Special rules in certain cases**

- 30 (1) An ICC prisoner serving a sentence in Australia may:
-

Section ^168

- 1 (a) be extradited to a foreign country in accordance with the
2 *Extradition Act 1988* either:
3 (i) after the completion of, or release from, the sentence; or
4 (ii) during the sentence, but only for a temporary period; or
5 (b) be required to remain in Australia in order to serve a sentence
6 that he or she is liable to serve under Australian law.
- 7 (2) Despite subsection (1):
8 (a) a person to whom paragraph (1)(a) applies may not, without
9 the prior agreement of the ICC, be extradited to a foreign
10 country; and
11 (b) a person to whom paragraph (1)(b) applies may not, without
12 the prior agreement of the ICC, be prosecuted or punished in
13 Australia;
14 for an offence constituted by an act or omission that occurred
15 before the making of the relevant designation referred to in
16 paragraph ^152(1)(c).
- 17 (3) Subsection (2) does not apply to a person who:
18 (a) remains voluntarily in Australia for more than 30 days after
19 the date of completion of, or release from, the sentence
20 imposed by the ICC; or
21 (b) voluntarily returns to Australia after having left it.

^168 Extradition of escaped ICC prisoner

- 22 (1) If:
23 (a) an ICC prisoner serving a sentence in a foreign country
24 escapes from custody and is located in Australia; and
25 (b) the foreign country makes a request to Australia for the
26 person's surrender in accordance with article 111 of the
27 Statute;
28 the *Extradition Act 1988* applies to the request:
29 (c) subject to necessary limitations, conditions, exceptions or
30 qualifications; and
31 (d) as if the request related to a person who had been convicted
32 of an extradition offence (within the meaning of that Act).
33
-

- 1 (2) If:
- 2 (a) an ICC prisoner serving a sentence in Australia escapes from
- 3 custody and is located in a foreign country; and
- 4 (b) the Attorney-General wishes to make a request to that
- 5 country for the person's surrender in accordance with article
- 6 111 of the Statute;
- 7 the Attorney-General may request the person's extradition under
- 8 the *Extradition Act 1988*, and that Act applies:
- 9 (c) with any necessary limitations, conditions, exceptions or
- 10 qualifications; and
- 11 (d) as if the request related to a person who had been convicted
- 12 of an extradition offence (within the meaning of that Act).

1

2 **Part 13—Requests by Australia to ICC**

3

4 **^169 Application of Part**

5

This Part applies where:

6

(a) an investigation is taking place in Australia; or

7

(b) a prosecution has been instituted in Australia;

8

in respect of conduct that is a crime within the jurisdiction of the

9

ICC or is an indictable offence against Australian law.

10 **^170 Request by Attorney-General**

11

(1) The Attorney-General may request the ICC to provide assistance under paragraph 10 of article 93 of the Statute in connection with the investigation or prosecution.

12

13

14

(2) The assistance that may be requested includes, but is not limited to, the following:

15

16

(a) the sending of statements, documents or other types of evidence obtained in the course of an investigation or trial conducted by the ICC;

17

18

(b) the questioning of a person detained by order of the ICC.

19

1

Part 14—Miscellaneous2
3**^171 Arrest of persons escaping from custody or contravening conditions of recognisances**

- 4
- 5
- 6 (1) A police officer may, without warrant, arrest a person, if the police
- 7 officer has reasonable grounds to believe that the person has
- 8 escaped from custody authorised by this Act.
- 9 (2) A police officer may, without warrant, arrest a person who has
- 10 been released on bail under this Act if the police officer has
- 11 reasonable grounds for believing that the person has contravened,
- 12 or is about to contravene, a term or condition of a recognisance on
- 13 which bail was granted to the person.
- 14 (3) A police officer who arrests a person under subsection (1) or (2)
- 15 must, as soon as practicable, take the person before a magistrate.
- 16 (4) If the magistrate is satisfied that the person has escaped from
- 17 custody authorised by this Act or has contravened, or is about to
- 18 contravene, a term or condition of a recognisance, the magistrate
- 19 may issue a warrant, by writing in the statutory form, authorising
- 20 any police officer to return the person to the custody from which
- 21 the person escaped, or was released on the recognisance, as the
- 22 case may be.

^172 Aiding persons to escape, etc.

- 23
- 24 Sections 46, 47A and 48 of the *Crimes Act 1914* (other than
- 25 paragraphs 46(ab) and 47A(d) of that Act) apply as if:
- 26 (a) references in those sections to custody in respect of any
- 27 offence against a law of the Commonwealth were references
- 28 to custody while in Australia pursuant to this Act; and
- 29 (b) references in those sections to arrest in respect of any offence
- 30 against a law of the Commonwealth were references to arrest
- 31 pursuant to this Act.

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- 1 (2) An arrangement may be varied or terminated at any time.
- 2 (3) The Attorney-General is to cause notice of the making, variation or
3 termination of an arrangement to be published in the *Gazette*.
- 4 (4) The reference in subsection (1) to the Governor of a State is:
- 5 (a) in relation to the Australian Capital Territory—a reference to
6 the Chief Minister of that Territory; or
- 7 (b) in relation to the Northern Territory—a reference to the
8 Administrator of that Territory; or
- 9 (c) in relation to Norfolk Island—a reference to the
10 Administrator of Norfolk Island.

^176 Delegation

- 12 The Attorney-General may delegate in writing all or any of his or
13 her powers and functions under this Act or the regulations, other
14 than powers and functions under section ^13 and Parts 3, 8 and 12
15 to:
- 16 (a) the Secretary of the Department; or
17 (b) an SES employee in the Department.

^177 Regulations

- 19 (1) The Governor-General may make regulations prescribing matters:
20 (a) required or permitted by this Act to be prescribed; or
21 (b) necessary or convenient to be prescribed for carrying out or
22 giving effect to this Act.
- 23 (2) In particular, regulations may make provision for or in respect of
24 information to be provided to ICC prisoners for the purposes of
25 Part 12.
- 26 (3) The regulations may prescribe penalties not exceeding a fine of 10
27 penalty units for offences against the regulations.