



International War Crimes Tribunals Act 1995

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About this compilation

This compilation

This is a compilation of the *International War Crimes Tribunals Act 1995* that shows the text of the law as amended and in force on 28 March 2026 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Part 1—Preliminary

1 Short title

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

2 Commencement

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

3 The objects of this Act

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

- (a) to enable the Tribunal to make requests for assistance (see Part 2); and
- (b) to provide for persons accused of Tribunal offences to be surrendered to the Tribunal (see Part 3); and
- (c) to provide the Tribunal with other forms of assistance in the investigation and prosecution of Tribunal offences (see Part 4); and

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- (d) to enable the Tribunal to sit in Australia (see Part 5); and
- (e) to enable forfeiture orders of the Tribunal to be enforced (see Part 6).

4 Definitions

In this Act, unless the contrary intention appears:

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

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

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

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

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

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

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

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

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

defendant has the meaning given by section 40AA.

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

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

evidential material means:

- (a) in Subdivision F of Division 6 of Part 4—evidence relating to:
 - (i) property in relation to which a forfeiture order has been or could be made; or
 - (ii) property in relation to which a restraining order has been or could be made for the purposes of section 40AC; or
 - (iii) proceeds of a Tribunal offence; or
- (b) otherwise—a thing relevant to a Tribunal offence, including such a thing in electronic form.

executing officer, in relation to a warrant, means:

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

federal prisoner means a person who:

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

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

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

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

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

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

forfeiture order means:

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

Former Yugoslavia Tribunal:

- (a) means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by United Nations Security Council Resolution 827 S/RES/827 (1993); and
- (b) includes the organs referred to in Article 11 of the Statute of the Tribunal.

Note: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website (www.un.org).

frisk search means:

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

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

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

International Residual Mechanism for Criminal Tribunals:

- (a) means the International Residual Mechanism for Criminal Tribunals, established by United Nations Security Council Resolution 1966 S/RES/1966 (2010); and
- (b) includes the organs referred to in Article 4 of the Statute of the Tribunal.

Note 1: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website (www.un.org).

Note 2: The United Nations Security Council decided on 22 December 2010 to establish this Mechanism to carry out residual functions of the Former Yugoslavia Tribunal and the Rwanda Tribunal.

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

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

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

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

magistrate means:

- (a) a magistrate of a Territory; or
- (b) a magistrate of a State (other than New South Wales or the Northern Territory) in respect of whom an arrangement under section 82 is in force; or

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- (ba) a Judge, or an acting Judge, of the Local Court of New South Wales in respect of whom an arrangement under section 82 is in force; or
- (c) a Judge, or an acting Judge, of the Local Court of the Northern Territory in respect of whom an arrangement under section 82 is in force.

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

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

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

officer assisting, in relation to a warrant, means:

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

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

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

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

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

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

police officer means:

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

police station includes:

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

premises includes a place and a conveyance.

prisoner means a federal prisoner or a State prisoner.

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

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

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

Note: Under that Act, the proceeds of crime authority is either the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definition of ***proceeds of crime authority*** in section 338 of that Act).

proceeds request has the meaning given by section 40AA.

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

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

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

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

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

Rwanda Tribunal:

- (a) means the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by United Nations Security Council Resolution 955 S/RES/955 (1994); and
- (b) includes the organs referred to in Article 10 of the Statute of the Tribunal.

Note: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website (www.un.org).

search warrant means a warrant issued under section 47.

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

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

State prisoner means a person who:

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

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

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

Statute of the Tribunal means:

- (a) for the Former Yugoslavia Tribunal—the Statute of the Tribunal:
- (i) adopted by United Nations Security Council Resolution 827 S/RES/827 (1993); and
 - (ii) annexed to the United Nations Secretary-General’s report S/25704 (1993) given pursuant to paragraph 2 of United Nations Security Council Resolution 808 S/RES/808 (1993); and
- (b) for the Rwanda Tribunal—the Statute of the Tribunal annexed to (and adopted by) United Nations Security Council Resolution 955 S/RES/955 (1994); and
- (c) for the International Residual Mechanism for Criminal Tribunals—the Statute of the Mechanism in Annex 1 to (and adopted by) United Nations Security Council Resolution 1966 S/RES/1966 (2010).

Note: In 2013, the text of United Nations Security Council resolutions and United Nations Secretary-General reports was accessible through the United Nations website (www.un.org).

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

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

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

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

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surrender warrant means a warrant issued under section 18.

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

Tribunal means:

- (a) the Former Yugoslavia Tribunal; or
- (b) the Rwanda Tribunal; or
- (c) the International Residual Mechanism for Criminal Tribunals.

Tribunal offence means:

- (a) an offence for which the Former Yugoslavia Tribunal has the power to prosecute persons under Article 2, 3, 4 or 5 of the Statute of the Tribunal; or
- (b) an offence for which the Rwanda Tribunal has the power to prosecute persons under Article 2, 3 or 4 of the Statute of the Tribunal; or
- (c) an offence for which the International Residual Mechanism for Criminal Tribunals has the power to prosecute persons under Article 1 of the Statute of the Tribunal.

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

5 Some Territories to be regarded as States

For the purposes of this Act, the Australian Capital Territory and the Northern Territory are to be regarded as States, and are not to be regarded as Territories.

6 External Territories

This Act extends to each external Territory.

6A Application of the *Criminal Code*

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

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

Part 2—Requests by a Tribunal for assistance

7 Tribunal may request assistance

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

8 Form of requests

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

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

Part 3—Surrender of persons to a Tribunal

Division 1—Arrest of persons

9 Notice by Attorney-General

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

10 Issue of warrants

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

before receiving a notice from the Attorney-General under section 9.

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

11 Cancellation of warrants

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

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

12 Remand

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

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Attorney-General to make a surrender determination and (if appropriate) to enable a magistrate to remand the person under section 20.

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

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

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

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

14 Release from remand after certain periods

- (1) A person must be brought before a magistrate if:
 - (a) the person was arrested under a warrant issued under subsection 10(2); and
 - (b) the person is, under this Division, on remand 14 days after the day on which the person was arrested; and
 - (c) a notice has not been given under section 9 in relation to the person.

- (2) Unless the magistrate is satisfied that such a notice is likely to be given within a particular period that is reasonable in all the circumstances, the magistrate must:
- (a) order the release of the person from custody; or
 - (b) order the discharge of the recognisances on which bail was granted to the person; as the case requires.
- (3) If:
- (a) a magistrate was satisfied under subsection (2) that such a notice was likely to be given in relation to the person within a particular period; and
 - (b) the notice is not given within the period;
- the person must be brought before a magistrate.
- (4) The magistrate must:
- (a) order the release of the person from custody; or
 - (b) order the discharge of the recognisances on which bail was granted to the person;
- as the case requires.

15 Application for search warrants

- (1) If:
- (a) a person is arrested under a warrant issued under section 10; and
 - (b) a police officer has reasonable grounds for suspecting that evidential material relating to a Tribunal offence in respect of which the warrant was issued is, or within the applicable period referred to in subsection (3) of this section will be, at any premises;
- the police officer may, by an information on oath that sets out the grounds for that suspicion, apply for a search warrant in relation to the premises to search for that material.
- (2) If:
- (a) a person is arrested under a warrant issued under section 10; and

Part 3 Surrender of persons to a Tribunal

Division 1 Arrest of persons

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

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

(3) For the purposes of this section, the applicable period is:

(a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 52-48 hours; or

(b) otherwise—72 hours.

Note: Part 7 deals with search warrants.

Division 2—Surrender of persons

16 Surrender determination by Attorney-General

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

17 Release from remand on refusal to surrender the person

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

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

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18 Surrender warrants

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

19 Persons imprisoned under Australian law

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

20 Detention following surrender warrants

- (1) If the Attorney-General issues the surrender warrant, the person must be brought as soon as practicable before a magistrate in the State or Territory in which the person is on remand.

- (2) A magistrate must remand the person in custody for such period or periods as may be necessary to enable the warrant to be executed.

21 Content of surrender warrants

- (1) A surrender warrant in relation to the person (the *eligible person*) must:
- (a) require the person in whose custody the eligible person is being held to release the eligible person into the custody of a police officer; and
 - (b) authorise the police officer to transport the eligible person in custody, and, if necessary or convenient, to detain the eligible person in custody, for the purpose of enabling the eligible person:
 - (i) to be placed in the custody of a specified person who is an officer of the Tribunal or other person authorised by the Tribunal; and
 - (ii) to be transported to a place specified by the Tribunal; and
 - (c) authorise the specified person to transport the eligible person in custody to a place specified by the Tribunal for the purpose of surrendering the eligible person to a person appointed by the Tribunal to receive the person.
- (2) A place referred to in paragraph (1)(b) or (c) may be a place in or outside Australia.

22 Execution of surrender warrants

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

23 Release from remand

- (1) If:
- (a) a surrender warrant has been issued in relation to a person; and

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

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

- (1) If, at the time a person was surrendered to a Tribunal under this Part in connection with a Tribunal offence, the person was serving a sentence of imprisonment in respect of an offence against a law of the Commonwealth or of a Territory, or was otherwise subject to detention under a law of the Commonwealth or of a Territory:
- (a) any time spent by the person in custody in connection with the surrender warrant; and
 - (b) subject to subsection (2), any time spent by the person in custody in connection with detention by, or on the order of, the Tribunal in respect of the Tribunal offence;
- is to be counted as time served towards the sentence of imprisonment or period of detention.
- (2) If the person is convicted of the Tribunal offence, time spent by the person in custody serving a sentence of imprisonment imposed by

the Tribunal for the Tribunal offence is not to be counted as time towards the sentence of imprisonment or period of detention referred to in subsection (1).

- (3) A reference in this section to time spent in custody includes a reference to time spent in custody outside Australia.

25 Expiry of Australian sentences while under Tribunal detention

If:

- (a) at the time a person was surrendered to a Tribunal under this Part, the person was serving a sentence of imprisonment in respect of an offence against an Australian law, or was otherwise subject to detention under an Australian law; and
- (b) each such sentence of imprisonment that the person was serving, or each such period of detention to which the person was subject, at that time expires while the person is being detained by, or on the order of, the Tribunal;

the Attorney-General must without delay inform the Tribunal of the expiry and, if the Tribunal was required to give undertakings as referred to in section 19, that the undertakings are no longer required to be complied with.

Part 4—Other forms of assistance to a Tribunal

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

Division 1AA—Providing law enforcement agency material

25A Authorising provision of material obtained by law enforcement agencies

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

Division 1—Taking evidence etc.

26 Attorney-General may authorise taking of evidence etc.

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

27 Taking of evidence

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

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28 Producing documents or other articles

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

29 Legal representation

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

- (a) the person to whom the proceeding before, or the investigation conducted by, the Tribunal relates; or
 - (b) that person's legal representative; or
 - (c) the Tribunal's legal representative;
- through a video link.

(4) In this section:

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

30 Form of certificates

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

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

31 Compellability of persons to attend etc.

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

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

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

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- (2) For the purposes of this Division, the person to whom the proceeding before, or the investigation conducted by, the Tribunal relates, is competent but not compellable to give evidence.
- (3) If:
- (a) a person is required to give evidence, or produce documents or other articles, for the purposes of a proceeding before, or an investigation conducted by, a Tribunal; and
 - (b) the person is not compellable to answer a particular question, or to produce a particular document or article, for the purposes of that proceeding or investigation;
- the person is not compellable to answer the question, or produce the document or article, for the purposes of this Division.

32 Tribunal immunity certificates

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

Tribunal immunity certificate means a certificate or declaration that:

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

Division 1A—Requests for surveillance devices

32A Authorising applications for surveillance device warrants

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

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

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

Division 1AB—Requests for access to data held in computers

32AA Authorising applications for computer access warrants

- (1) The Attorney-General may authorise, in writing, an eligible law enforcement officer to apply for a computer access warrant under section 27A of the *Surveillance Devices Act 2004* if:
- (a) a Tribunal has requested the Attorney-General to arrange for access to data held in a computer (the **target computer**); and
 - (b) the Attorney-General is satisfied that a proceeding is before, or an investigation is being conducted by, the Tribunal; and
 - (c) the Attorney-General is satisfied that the Tribunal has given appropriate undertakings for:
 - (i) ensuring that data obtained as a result of the access under the warrant will only be used for the purpose for which it is communicated to the Tribunal; and
 - (ii) the destruction of a document or other thing containing data obtained as a result of access under the warrant; and
 - (iii) any other matter the Attorney-General considers appropriate.

Note: The eligible law enforcement officer can only apply for the warrant if the officer reasonably suspects that the access to data held in the target computer is necessary for the investigation or proceeding (see subsection 27A(4) of the *Surveillance Devices Act 2004*).

- (2) In this section:

computer has the same meaning as in the *Surveillance Devices Act 2004*.

data has the same meaning as in the *Surveillance Devices Act 2004*.

data held in a computer has the same meaning as in the *Surveillance Devices Act 2004*.

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

Division 1B—Forensic procedures

32B Authorising application for carrying out of forensic procedures

- (1) The Attorney-General may authorise, in writing, a constable to apply under Part ID of the *Crimes Act 1914* for an order for the carrying out of a forensic procedure on a person if:
 - (a) a Tribunal has requested the procedure to be carried out on the person; and
 - (b) the Attorney-General is satisfied:
 - (i) that the request relates to a proceeding before, or an investigation conducted by, the Tribunal; and
 - (ii) that the person is, or is believed to be, in Australia; and
 - (iii) that the Tribunal has given appropriate undertakings about the retention, use and destruction of forensic material, or of information obtained from analysing that material; and
 - (iv) that the Tribunal has given any other undertakings that the Attorney-General considers necessary; and
 - (v) unless subsection (2) applies—that the person has been given an opportunity to consent to the forensic procedure and has not consented to it; and
 - (vi) if subsection (2) applies—of the matters in that subsection; and
 - (c) in the case of the person being a suspect, the constable is an authorised applicant.
- (2) If the person is a child or an incapable person, the matters are:
 - (a) that either:
 - (i) the consent of a parent or guardian of the person cannot reasonably be obtained or has been withdrawn; or
 - (ii) a parent or guardian of the person is a suspect in relation to an offence to which the investigation or proceeding relates; and

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- (b) that, having regard to the best interests of the person, it is appropriate to make the authorisation.
- (3) In this section:

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

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

32C Providing forensic evidence to the Tribunal

- (1) The Attorney-General may direct a constable about how forensic evidence is to be provided to a Tribunal if:
- (a) the Attorney-General gave an authorisation to the constable under subsection 32B(1); and
 - (b) the forensic evidence resulted from the authorisation.
- (2) A direction under subsection (1) is not a legislative instrument.

Division 2—Search and seizure

33 Attorney-General may authorise applications for search warrants

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

34 Applications for search warrants

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

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- (a) a police officer is authorised under section 33 to apply for a search warrant; and
 - (b) the police officer has reasonable grounds for suspecting that the evidential material is, or within the applicable period referred to in subsection (3) of this section will be, in a person's possession;
- the police officer may, by an information on oath setting out the grounds for that suspicion, apply for a search warrant in relation to that person to search for that material.
- (3) For the purposes of this section, the applicable period is:
 - (a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 52-48 hours; or
 - (b) otherwise-72 hours.

Note: Part 7 deals with search warrants.

Division 2A—Stored communications

34A Authorising application for a stored communications warrant

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

- (a) the Attorney-General is satisfied that:
 - (i) a proceeding is before, or an investigation is being conducted by, a Tribunal; and
 - (ii) there are reasonable grounds to believe that stored communications relevant to the proceeding or investigation are held by a carrier; and
- (b) the Tribunal has requested the Attorney-General to arrange for access to the stored communications.

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

Division 2B—Prospective telecommunications data

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

- (1) The Attorney-General may authorise, in writing, the making of an authorisation under section 180B of the *Telecommunications (Interception and Access) Act 1979* for the disclosure of information or documents if:
 - (a) a Tribunal has requested the Attorney-General to arrange for the disclosure of the information or documents; and
 - (b) the information or documents come into existence during a period specified by the Tribunal, and which started on or after the day the request was made; and
 - (c) the Attorney-General is satisfied that:
 - (i) a proceeding is before, or an investigation is being conducted by, the Tribunal; and
 - (ii) the information or documents relate to the fact of a communication passing over a telecommunications system during a period specified in the Tribunal's request.
- Note: The information or documents will not be disclosed unless they are reasonably necessary for the investigation or proceeding (see subsection 180B(3) of that Act).
- (2) To avoid doubt, information or documents do not relate to the fact of a communication passing over a telecommunications system to the extent that the information is, or the documents contain, the contents or substance of a communication.

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

35 Persons giving evidence or assisting (other than prisoners)

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

36 Prisoners giving evidence or assisting

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

Part 4 Other forms of assistance to a Tribunal

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

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officer, or prison officer, appointed by the Attorney-General for the purpose.

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

- (5) In this section:

parole includes any order or licence to be at large.

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

37 Undertakings relating to prisoners

- (1) A Tribunal is to give, to the extent (if any) required by the Attorney-General, an undertaking, in relation to any prisoner who is to give evidence in a foreign country pursuant to a request by the Tribunal, that the prisoner will be returned to Australia in accordance with arrangements agreed to by the Attorney-General.
- (2) If the prisoner is being held in custody in Australia and the Attorney-General requests the Tribunal to make arrangements for keeping the prisoner in custody while he or she is in the foreign country, the Tribunal is also to give, to the extent (if any) required by the Attorney-General, the following undertakings:
 - (a) that appropriate arrangements will be made for that purpose;
 - (b) that the prisoner will not be released from custody in the foreign country unless the Attorney-General notifies the Tribunal that the prisoner is entitled to be released from custody under Australian law;
 - (c) if the prisoner is so released-that his or her accommodation and expenses will be paid for by the Tribunal until the Tribunal decides that the person is no longer required to give evidence in the proceeding, or to assist the investigation, to which the request relates.

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

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

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

Division 4—Custody of persons in transit

39 Transit

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

Division 5—Service of process

40 Service of process

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

Part 4 Other forms of assistance to a Tribunal

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

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

Subdivision A—Preliminary

40AA Application of Division

This Division applies if:

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

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

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

- (a) relates to a proceeding before, or an investigation conducted by, the Tribunal; and
- (b) is for assistance that can be obtained from one or more production orders, monitoring orders or search warrants under the *Proceeds of Crime Act 2002*.

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

Subdivision B—Restraining orders

40AC Applying for and making restraining orders

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

40AD Excluding property from restraining orders

If:

- (a) a court makes a restraining order under Part 2-1 of the *Proceeds of Crime Act 2002* against property in respect of the Tribunal offence; and

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- (b) a person having an interest in the property applies to the court under Division 3 of Part 2-1 of that Act for an order varying the restraining order to exclude the person's interest from the restraining order;

the court must grant the application if the court is satisfied that:

- (c) in a case where the applicant is not the defendant:
- (i) the applicant was not, in any way, involved in the commission of the Tribunal offence; and
 - (ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the Tribunal offence—the property was not proceeds of the Tribunal offence; or
- (d) in any case—it is in the public interest to do so having regard to any financial hardship or other consequence of the interest remaining subject to the order.

40AE When restraining order ceases to be in force

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

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

Subdivision C—Production orders relating to Tribunal offences

40AF Applying for and making production orders

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

40AG Retaining produced documents

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

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- (2) Directions from the Attorney-General may include a direction that the document be sent to the Tribunal.

Subdivision D—Notices to financial institutions

40AH Giving notices to financial institutions

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

40AI Contents of notices to financial institutions

The notice must:

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

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

- (1) No action, suit or proceeding lies against:
 - (a) a financial institution; or
 - (b) an officer, employee or agent of the institution acting in the course of that person's employment or agency;in relation to any action taken by the institution or person under a notice under section 40AH or in the mistaken belief that action was required under the notice.

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- (2) A financial institution which, or an officer, employee or agent of a financial institution who, provides information under a notice under section 40AH is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money laundering), not to have been in possession of that information at any time.

40AK Making false statements in applications

A person commits an offence if:

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

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

40AL Disclosing existence or nature of notice

A person commits an offence if:

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

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

40AM Failing to comply with a notice

(1) A person commits an offence if:

- (a) the person is given a notice under section 40AH; and
- (b) the person fails to comply with the notice.

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

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

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

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

Subdivision E—Monitoring orders relating to Tribunal offences

40AN Applying for and making monitoring orders

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

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40AO Passing on information given under monitoring orders

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

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

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

40AP Applying for and issuing search warrants

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

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- (d) paragraphs 227(1)(a), (b), (h) and (ha) and 228(1)(d) and (da) and sections 256 to 262 of the *Proceeds of Crime Act 2002* were omitted.

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

40AQ Contents of POCA search warrants

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

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

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

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

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

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

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

40AS Return of seized property to third parties

- (1) A person who claims an interest in property that has been seized under a POCA search warrant in relation to a Tribunal offence may apply to a court for an order that the property be returned to the person.
- (2) The court must be a court of the State or Territory in which the POCA search warrant was issued that has proceeds jurisdiction.

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

40AT Dealing with certain seized property

- (1) Property must be dealt with in accordance with this section if:
 - (a) it has been seized under a POCA search warrant in relation to a Tribunal offence; and
 - (b) it is not:
 - (i) evidential material; or
 - (ii) property of a kind referred to in subparagraph 40AR(a)(iv) or (v).

General rule—property to be returned after 30 days

- (2) If, at the end of the period of 30 days after the day the property was seized:
 - (a) a forfeiture order in relation to the property has not been registered in a court under Part 6; and
 - (b) a restraining order has not been made as described in Subdivision B in respect of the property in relation to the Tribunal offence;

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the responsible enforcement agency head must, unless subsection (3), (5) or (7) applies, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

Effect of restraining orders being registered or obtained

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

Retaining property despite restraining orders

- (5) If, at a time when the property is in the possession of the responsible enforcement agency head, a restraining order has been made as described in Subdivision B in respect of the property in relation to the Tribunal offence, the responsible enforcement agency head may apply:
- (a) to the court in which the restraining order was registered; or
 - (b) to the court by which the restraining order was made;
- for an order that the responsible enforcement agency head retain possession of the property.

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

Effect of forfeiture orders by the Tribunal being registered or obtained

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

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

- (1) This section applies if:
- (a) property or a thing (the *seized item*) is seized under a POCA search warrant in relation to a Tribunal offence; and
 - (b) the seized item is:
 - (i) evidential material; or
 - (ii) property or a thing of a kind referred to in subparagraph 40AR(a)(iv); and
 - (c) the seized item is seized by a person (the *seizing officer*) who is:
 - (i) an authorised officer; or
 - (ii) a person assisting in relation to the warrant.
- (2) The seizing officer may retain the seized item for a period not exceeding 1 month pending a written direction from the Attorney-General as to how to deal with the seized item.
- (3) Without limiting the directions that may be given under subsection (2), the Attorney-General may direct the seizing officer to send the seized item to the Tribunal.

Part 5—Sittings of a Tribunal in Australia

41 Tribunal sittings in Australia

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

42 Tribunal's powers while sitting in Australia

- (1) While a Tribunal is sitting in Australia, it may exercise such powers as are prescribed by the regulations in respect of the Tribunal.
- (2) Regulations made for the purposes of subsection (1) must implement agreements between the Commonwealth and the Tribunal about the powers that the Tribunal may exercise while sitting in Australia.
- (3) Despite section 14 of the *Legislation Act 2003*, regulations made for the purposes of subsection (1) may apply, adopt or incorporate, with or without modification, the rules of procedure and evidence, as in force at a particular time or as in force from time to time, adopted under:
 - (a) in the case of the Former Yugoslavia Tribunal—Article 15 of the Statute of the Tribunal; or
 - (b) in the case of the Rwanda Tribunal—Article 14 of the Statute of the Tribunal; or

- (c) in the case of the International Residual Mechanism for Criminal Tribunals—Article 13 of the Statute of the Tribunal.

43 Contravention of Tribunal orders etc.

A person must not:

- (a) intentionally contravene an order that a Tribunal makes while sitting in Australia; or
- (b) otherwise intentionally hinder a Tribunal in performing its functions while sitting in Australia.

Penalty: Imprisonment for 2 years.

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

Part 6—Forfeiture of proceeds of Tribunal offences

44 Requests for enforcement of forfeiture orders

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

45 Registration of order

- (1AA) An application for the registration of an order in accordance with an authorisation under subsection 44(1) must be to a court with proceeds jurisdiction.
- (1) If a proceeds of crime authority so applies to a court with proceeds jurisdiction, the court must register the order, unless the court is satisfied that it would be contrary to the interests of justice to do so.
- (1A) The proceeds of crime authority must give notice of the application:

- (a) to specified persons the authority has reason to suspect may have an interest in the property; and
 - (b) to such other persons as the court directs.
- (1B) However, the court may consider the application without notice having been given if the proceeds of crime authority requests the court to do so.
- (2) An order must be registered in a court by the registration, under the rules of the court, of a copy of the appropriate order sealed by the Tribunal.
- (3) Subject to subsection 46(2), if a copy of a sealed copy of an order is faxed, emailed or sent by other electronic means, it is taken for the purposes of subsection (2) of this section to be the same as the sealed copy.

46 Effect of order

- (1) A forfeiture order registered in a court has effect, and may be enforced, as if it were a forfeiture order made by the court under the *Proceeds of Crime Act 2002* at the time of registration.
- (1A) In particular, section 68 of the *Proceeds of Crime Act 2002* applies in relation to the forfeiture order as if:
- (a) the reference in subparagraph 68(1)(b)(i) of that Act to a proceeds of crime authority having applied for the order were a reference to the authority having applied for registration of the order under section 45 of this Act; and
 - (b) subparagraph 68(1)(b)(ii) of that Act were repealed.
- (2) A registration effected by a court registering a copy of a sealed copy ceases to have effect after 45 days unless the sealed copy has been filed by then in that court.
- (3) Subject to section 46A, property that is subject to an order registered under this Part may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or

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of a person authorised by the Attorney-General in writing for the purposes of this subsection.

- (4) Sections 69 to 71, Divisions 5 to 7 of Part 2-2, Part 4-2 and sections 322 and 323 of the *Proceeds of Crime Act 2002* do not apply in relation to an order registered under this Part.

46A Effect on third parties of registration of forfeiture orders

Applications by third parties

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

Orders by the court

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

- (i) directing the Commonwealth to transfer the interest to the applicant; or
- (ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

Certain people need leave to apply

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

Period for applying

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

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Procedural matters

- (8) A person who applies under subsection (1) must give to the proceeds of crime authority authorised under subsection 45(1) and the Attorney-General notice, as prescribed, of the application.
- (9) That proceeds of crime authority is to be a party to proceedings on an application under subsection (1). The Attorney-General may intervene in the proceedings.

Part 7—Search, seizure and powers of arrest

Division 1—Search warrants

47 When search warrants can be issued

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

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

48 Content of warrants

- (1) If a magistrate issues a search warrant, the magistrate is to state in the warrant:
 - (a) the purpose for which it is issued, including the Tribunal offence to which the application for the warrant relates; and
 - (b) a description of the premises to which the warrant relates or the name or description of the person to whom it relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the police officer who, unless he or she inserts the name of another police officer in the warrant, is to be responsible for executing the warrant; and

- (e) the period for which the warrant remains in force, which must not be more than:
 - (i) if the warrant is issued on an application by telephone, telex, fax or other electronic means as provided by section 52—48 hours; or
 - (ii) otherwise—7 days; and
 - (f) whether the warrant may be executed at any time or only during particular hours.
- (2) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.
- (3) The magistrate is also to state, in a warrant in relation to premises:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material; or
 - (ii) a thing relevant to an indictable offence against an Australian law;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing a Tribunal offence or an indictable offence against an Australian law; and
 - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.
- (4) The magistrate is also to state, in a warrant in relation to a person:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, in the possession of the

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person or in or on a recently used conveyance, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:

- (i) evidential material; or
- (ii) a thing relevant to an indictable offence against an Australian law;

if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing a Tribunal offence or an indictable offence against an Australian law; and

- (b) the kind of search of a person that the warrant authorises.

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

- (1) A warrant in force in relation to premises authorises the executing officer or an officer assisting:

- (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
- (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
- (d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material; or
 - (ii) things relevant to an indictable offence against an Australian law;

if the executing officer or an officer assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing a Tribunal offence or an indictable offence against an Australian law; and

- (e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be seizable items; and
 - (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.
- (2) If the warrant states that it may be executed only during particular hours, it must not be executed outside those hours.

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

- (1) A warrant in force in relation to a person authorises the executing officer or an officer assisting:
- (a) to:
 - (i) search the person as specified in the warrant; and
 - (ii) search things found in the possession of the person; and
 - (iii) search any recently used conveyance;
for things of the kind specified in the warrant; and
 - (b) to:
 - (i) seize things of that kind; and
 - (ii) record fingerprints from things; and
 - (iii) take forensic samples from things;
found in the course of the search; and
 - (c) to seize other things found in the possession of the person or in or on the conveyance in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material; or
 - (ii) things relevant to an indictable offence against an Australian law;if the executing officer or a police officer assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use

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in committing a Tribunal offence or an indictable offence against an Australian law; and

- (d) to seize other things found in the course of the search that the executing officer or a police officer assisting believes on reasonable grounds to be seizable items.
- (2) If the warrant states that it may be executed only during particular hours, it must not be executed outside those hours.
- (3) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

51 Restrictions on personal searches

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

52 Warrants may be issued by telephone etc.

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

- (a) a warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;
- the magistrate may complete and sign the same form of warrant that would be issued under section 47.

53 Formalities relating to warrants issued by telephone etc.

- (1) If the magistrate decides to issue the warrant under section 52, the magistrate is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (2) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (3) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
 - (a) the form of warrant completed by the applicant; and
 - (b) if the information referred to in subsection 52(3) was not sworn—that information duly sworn.
- (4) The magistrate is to attach to the documents provided under subsection (3) the form of warrant completed by the magistrate.
- (5) If:
 - (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under section 52 was duly authorised; and
 - (b) the form of warrant signed by the magistrate is not produced in evidence;the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Division 2—Provisions relating to execution of search warrants

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

In executing a search warrant:

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

55 Copy of warrant to be shown to occupier etc.

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

56 Specific powers available to officers executing warrants

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

57 Use of equipment to examine or process things

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

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the things may be moved to another place so that the examination or processing can be carried out in order to determine whether the things may be seized under the warrant.

- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:
 - (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it may be seized under the warrant if the executing officer or police officer assisting believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or thing.

58 Use of electronic equipment at premises

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

- (b) if the material can, by using facilities at the premises, be put in a documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device:
 - (i) that is brought to the premises; or
 - (ii) that is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) Equipment may be seized under paragraph (2)(a) only if:
- (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence against an Australian law.
- (4) If the executing officer or an officer assisting believes on reasonable grounds that:
- (a) evidential material may be accessible by operating electronic equipment at the warrant premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
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- (a) for up to 24 hours; or
 - (b) until the equipment has been operated by the expert;
whichever happens first.
- (7) If the executing officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.
- (8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (9) Division 1 applies, with such modifications as are necessary, to issuing an extension.

59 Compensation for damage to electronic equipment

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

60 Copies of seized things to be provided

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

61 Occupier entitled to be present during search

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

62 Receipts for things seized under warrant

- (1) If a thing is seized under a warrant or moved under subsection 57(2), the executing officer or an officer assisting must provide a receipt for the thing.

Part 7 Search, seizure and powers of arrest

Division 2 Provisions relating to execution of search warrants

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- (2) If 2 or more things are seized or removed, they may be covered in the one receipt.

Division 3—Stopping and searching conveyances

63 Searches without warrant in emergency situations

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

64 How a police officer exercises a power under section 63

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

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

Division 4—Arrest and related matters

65 Power to enter premises to arrest person

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

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

66 Use of force in making arrest

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

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

67 Persons to be informed of grounds of arrest

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

Tribunal offence in respect of which, or the reason for which, he or she is being arrested.

68 Power to conduct a frisk search of an arrested person

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

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

69 Power to conduct an ordinary search of an arrested person

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

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

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

70 Power to conduct search of arrested person's premises

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

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

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71 Power to conduct an ordinary search or strip search

- (1) If a person who has been arrested under this Act or pursuant to a warrant issued under this Act is brought to a police station, a police officer may:
 - (a) if an ordinary search of the person has not been conducted—conduct an ordinary search of the person; or
 - (b) subject to this section, conduct a strip search of the person.
- (2) A strip search may be conducted if:
 - (a) a police officer suspects on reasonable grounds that:
 - (i) the person has in his or her possession evidential material relating to the Tribunal offence to which the person's custody relates; or
 - (ii) the person has in his or her possession a seizable item; or
 - (iii) a visual inspection of the person's body will provide evidence of the person's involvement in that offence; and
 - (b) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that thing or to discover that evidence; and
 - (c) a police officer of the rank of superintendent or higher has approved the conduct of the search.
- (3) Subject to section 72, a strip search may also be conducted if the person consents in writing.
- (4) Subject to section 72, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.
- (5) The approval may be obtained by telephone, telex, fax or other electronic means.
- (6) A police officer who gives or refuses to give an approval for the purposes of paragraph (2)(c) must make a record of the decision and of the reasons for the decision.

- (7) Such force as is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (2).
- (8) Any item of a kind referred to in subparagraph (2)(a)(i) or (ii) that is found during a strip search may be seized.

72 Rules for conduct of strip search

- (1) A strip search:
 - (a) must be conducted in a private area; and
 - (b) must be conducted by a police officer who is of the same sex as the person being searched; and
 - (c) subject to subsections (3) and (4), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
 - (d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
 - (e) must not be conducted on a person who is under 10; and
 - (f) if the person being searched is at least 10 but under 18, or is incapable of managing his or her affairs:
 - (i) may only be conducted if a court orders that it be conducted; and
 - (ii) must be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person; and
 - (g) must not involve a search of a person's body cavities; and
 - (h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the Tribunal offence to which the person's custody relates; and

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

Division 5—General

73 Conduct of ordinary searches and frisk searches

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

74 Announcement before entry

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

75 Offence for making false statements in warrants

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

Penalty: Imprisonment for 2 years.

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

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76 Offences relating to telephone warrants

A person must not:

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

Penalty: Imprisonment for 2 years.

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

77 Retention of things seized

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

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

Part 8—Miscellaneous

78 Arrest of persons escaping from custody

- (1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person has escaped from custody authorised by this Act.
- (2) The police officer must, as soon as practicable, take the person before a magistrate.
- (3) If the magistrate is satisfied that the person has escaped from custody authorised by this Act, the magistrate may issue a warrant authorising any police officer to return the person to the custody referred to in subsection (1).

79 Arrest of person released on bail

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

80 Aiding persons to escape etc.

Sections 46, 46A, 47A, 47C and 48 of the *Crimes Act 1914* have effect as if:

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

81 Legal assistance

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

82 Arrangements with States

- (1) The Governor-General may make arrangements with the Governor of a State with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as magistrates of that State.
- (2) The Governor-General may arrange with the Governor of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Section 83

- (3) A copy of each instrument by which an arrangement under subsection (1) or (2) is made, varied or revoked is to be published in the *Gazette*.
- (3A) For the purposes of the application of this section in relation to New South Wales, references to persons who hold office as magistrates of a State are taken to be references to persons who hold office as Judges of the Local Court of New South Wales.
- (4) For the purposes of the application of this section in relation to the Australian Capital Territory, references in this section to the Governor of a State are taken to be references to the Chief Minister of the Australian Capital Territory.
- (5) For the purposes of the application of this section in relation to the Northern Territory, references in this section to the Governor of a State are taken to be references to the Administrator of the Northern Territory and references to persons who hold office as magistrates of a State are taken to be references to persons who hold office as Judges of the Local Court of the Northern Territory.

83 Delegation

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

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

84 Act not to limit other provision of assistance

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

85 Regulations

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

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

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	orig = original
am = amended	p = page(s)
amdt = amendment	para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
ch = Chapter(s)	prev = previous
cl = clause(s)	(prev...) = previously
cont. = continued	pt = Part(s)
def = definition(s)	r = regulation(s)/Court rule(s)
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
div = Division(s)	rep = repealed
ed = editorial change	rs = repealed and substituted
exp = expires/expired or ceases/ceased to have effect	s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)
gaz = gazette	sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	SLI = Select Legislative Instrument
LIA = <i>Legislative Instruments Act 2003</i>	SR = Statutory Rules
(md) = misdescribed amendment can be given effect	sub ch = Sub-Chapter(s)
(md not incorp) = misdescribed amendment cannot be given effect	sub div = Subdivision(s)
mod = modified/modification	sub pt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
International War Crimes Tribunals Act 1995 (C2004A04874)	18, 1995	29 Mar 1995	s 1 and 2: 29 Mar 1995 (s 2(1)) Remainder: 28 Aug 1995 (s 2(2),(3) and gaz 1995, No S323)	
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (C2004A00794)	24, 2001	6 Apr 2001	s 4(1), (2) and sch 33: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002 (C2004A01023)	86, 2002	11 Oct 2002	sch 2 (items 1-5): 1 Jan 2003 (s 2(1) item 2 and gaz 2002, No GN44)	sch 2 (item 5)
Crimes Legislation Enhancement Act 2003 (C2004A01126)	41, 2003	3 June 2003	sch 2 (items 8, 9, 12, 13): 3 June 2003 (s 2(1) item 8)	sch 2 (item 13)
Statute Law Revision Act 2006 (C2006A00009)	9, 2006	23 Mar 2006	sch 1 (item 16): 28 Aug 1995 (s 2(1) item 10)	—
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011 (C2011A00003)	3, 2011	2 Mar 2011	sch 2 (item 25): 3 Mar 2011 (s 2(1) item 4)	—

Endnotes

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Mutual Assistance in Criminal Matters Amendment (Registration of Foreign Proceeds of Crime Orders) Act 2011 (C2011A00083)	83, 2011	25 July 2011	sch 1 (items 3, 4, 8, 9): 25 July 2011 (s 2)	sch 1 (items 8, 9)
Crimes Legislation Amendment Act (No. 2) 2011 (C2011A00174) as amended by	174, 2011	5 Dec 2011	sch 2 (items 210-217): 1 Jan 2012 (s 2(1) item 5)	sch 2 (item 217)
Statute Law Revision Act 2012 (C2012A00136)	136, 2012	22 Sept 2012	sch 2 (items 4, 5): 1 Jan 2012 (s 2(1) item 9)	—
Statute Law Revision Act 2012 (C2012A00136)	136, 2012	22 Sept 2012	sch 4 (item 51): 22 Sept 2012 (s 2(1) item 35)	—
Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013 (C2013A00074) as amended by	74, 2013	28 June 2013	sch 5 (items 7-15): 29 June 2013 (s 2(1) item 7)	sch 5 (item 15)
Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018 (C2018A00148)	34, 2018	22 May 2018	sch 5 (items 5, 6): 23 May 2018 (s 2(1) item 8)	—

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 1) 2014 (C2014A00031)	31, 2014	27 May 2014	sch 8 (item 24): 24 June 2014 (s 2(1) item 9)	—
Norfolk Island Legislation Amendment Act 2015 (C2015A00059)	59, 2015	26 May 2015	sch 2 (items 229-232); 1 July 2016 (s 2(1) item 5) sch 2 (items 356-396); 18 June 2015 (s 2(1) item 6)	sch 2 (items 356-396)
as amended by Territories Legislation Amendment Act 2016 (C2016A00033)	33, 2016	23 Mar 2016	sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 (C2015A00126)	126, 2015	10 Sept 2015	sch 1 (item 319): 5 Mar 2016 (s 2(1) item 2)	—
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016 (C2016A00026)	26, 2016	23 Mar 2016	sch 1 (items 24-26, 34, 35): 1 May 2016 (s 2(1) item 2)	sch 1 (items 34, 35)
Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018 (C2018A00034)	34, 2018	22 May 2018	sch 1 (items 3, 4, 17-21, 26-29, 73, 74, 82, 83, 137-139, 201-212); 22 Nov 2018 (s 2(1) item 2)	sch 1 (items 21, 139, 212)

Endnotes

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (C2018A00148)	148, 2018	8 Dec 2018	sch 2 (items 134, 146): 9 Dec 2018 (s 2(1) item 5)	sch 2 (item 146)
Law and Justice Legislation Amendment (New South Wales Local Court) Act 2026 (C2026A00004)	4, 2026	5 Mar 2026	sch 1 (items 17-19, 30): 28 Mar 2026 (s 2(1) item 1)	sch 1 (item 30)

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 4.....	am No 41, 2003; No 174, 2011; No 74, 2013; No 31, 2014; No 59, 2015; No 26, 2016; No 34, 2018; No 4, 2026
s 5.....	am No 59, 2015
s 6A.....	ad No 24, 2001
Part 4	
Division 1AA	
Division 1AA.....	ad No 34, 2018
s 25A.....	ad No 34, 2018
Division 1	
s 28.....	am No 34, 2018
s 29.....	am No 41, 2003
Division 1A	
Division 1A.....	ad No 34, 2018
s 32A.....	ad No 34, 2018
Division 1AB	
Division 1B (first occurring)	ad No 148, 2018 renum ed C16
Division 1AB (prev Division 1B first occurring)	
s 32B (first occurring).....	ad No 148, 2018 renum ed C16
s 32AA (prev s 32B first occurring)	
Division 1B	
Division 1B.....	ad No 34, 2018
s 32B	ad No 34, 2018
s 32C	ad No 34, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 2A	
Division 2A.....	ad No 34, 2018
s 34A.....	ad No 34, 2018
Division 2B	
Division 2B.....	ad No 34, 2018
s 34B.....	ad No 34, 2018
Division 6	
Division 6.....	ad No 34, 2018
Subdivision A	
s 40AA.....	ad No 34, 2018
s 40AB.....	ad No 34, 2018
Subdivision B	
s 40AC.....	ad No 34, 2018
s 40AD.....	ad No 34, 2018
s 40AE.....	ad No 34, 2018
Subdivision C	
s 40AF.....	ad No 34, 2018
s 40AG.....	ad No 34, 2018
Subdivision D	
s 40AH.....	ad No 34, 2018
s 40AI.....	ad No 34, 2018
s 40AJ.....	ad No 34, 2018
s 40AK.....	ad No 34, 2018
s 40AL.....	ad No 34, 2018
s 40AM.....	ad No 34, 2018
Subdivision E	
s 40AN.....	ad No 34, 2018
s 40AO.....	ad No 34, 2018
Subdivision F	
s 40AP.....	ad No 34, 2018
s 40AQ.....	ad No 34, 2018

Endnote 4—Amendment history

Provision affected	How affected
s 40AR	ad No 34, 2018
s 40AS.....	ad No 34, 2018
s 40AT	ad No 34, 2018
s 40AU.....	ad No 34, 2018
Part 5	
s 42.....	am No 136, 2012; No 74, 2013; No 126, 2015
s 43.....	am No 24, 2001
Part 6	
s 44.....	am No 174, 2011; No 34, 2018
s 45.....	am No 83, 2011; No 174, 2011 (as am by No 136, 2012); No 34, 2018
s 46.....	am No 86, 2002; No 174, 2011; No 34, 2018
s 46A.....	ad No 86, 2002 am No 174, 2011 (as am by No 136, 2012); No 34, 2018
Part 7	
Division 1	
s 51.....	am No 9, 2006
Part 8	
s 80.....	am No 41, 2003 rs No 3, 2011
s 82.....	am No 59, 2015; No 26, 2016; No 4, 2026
Schedule 1.....	rep No 74, 2013
Schedule 2.....	rep No 74, 2013
Schedule 3.....	rep No 74, 2013
Schedule 4.....	rep No 74, 2013