International Criminal Court (Consequential Amendments) Act 2002

No. 42, 2002

An Act to amend the *Criminal Code Act 1995* and certain other Acts in consequence of the enactment of the *International Criminal Court Act 2002*, and for other purposes

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm)

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An Act to amend the *Criminal Code Act 1995* and certain other Acts in consequence of the enactment of the *International Criminal Court Act 2002*, and for other purposes

[*Assented to 27 June 2002*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Criminal Court (Consequential Amendments) Act 2002*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent	28 June 2002
2. Schedules 1 to 7	The day fixed under column 2 of item 2 of the table in subsection 2(1) of the *International Criminal Court Act 2002*	26 September 2002 (*Gazette* 2002, No. GN38)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Criminal Code Act 1995

1 Chapter 8 of the Schedule to the Criminal Code (heading)

Repeal the heading, substitute:

Chapter 8—Offences against humanity and related offences

2 The Schedule to the Criminal Code (before Division 270)

Insert:

Division 268—Genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the International Criminal Court

Subdivision A—Introductory

268.1 Purpose of Division

(1) The purpose of this Division is to create certain offences that are of international concern and certain related offences.

(2) It is the Parliament's intention that the jurisdiction of the International Criminal Court is to be complementary to the jurisdiction of Australia with respect to offences in this Division that are also crimes within the jurisdiction of that Court.

(3) Accordingly, the *International Criminal Court Act 2002* does not affect the primacy of Australia's right to exercise its jurisdiction with respect to offences created by this Division that are also crimes within the jurisdiction of the International Criminal Court.

268.2 Outline of offences

(1) Subdivision B creates offences each of which is called ***genocide***.

(2) Subdivision C creates offences each of which is called a ***crime against humanity***.

(3) Subdivisions D, E, F, G and H create offences each of which is called a ***war crime***.

(4) Subdivision J creates offences each of which is called a ***crime against the administration of the justice of the International Criminal Court***.

Subdivision B—Genocide

268.3 Genocide by killing

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

268.4 Genocide by causing serious bodily or mental harm

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes serious bodily or mental harm to one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

Penalty: Imprisonment for life.

(2) In subsection (1):

causes serious bodily or mental harm includes, but is not restricted to, commits acts of torture, rape, sexual violence or inhuman or degrading treatment.

268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts certain conditions of life upon one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and

(d) the conditions of life are intended to bring about the physical destruction of that group, in whole or in part.

Penalty: Imprisonment for life.

(2) In subsection (1):

conditions of life includes, but is not restricted to, intentional deprivation of resources indispensable for survival, such as deprivation of food or medical services, or systematic expulsion from homes.

268.6 Genocide by imposing measures intended to prevent births

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator imposes certain measures upon one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and

(d) the measures imposed are intended to prevent births within that group.

Penalty: Imprisonment for life.

268.7 Genocide by forcibly transferring children

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator forcibly transfers one or more persons; and

(b) the person or persons belong to a particular national, ethnical, racial or religious group; and

(c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and

(d) the transfer is from that group to another national, ethnical, racial or religious group; and

(e) the person or persons are under the age of 18 years; and

(f) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age.

Penalty: Imprisonment for life.

(2) In subsection (1):

forcibly transfers one or more persons includes transfers one or more persons:

(a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or

(b) by taking advantage of a coercive environment.

Subdivision C—Crimes against humanity

268.8 Crime against humanity—murder

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

268.9 Crime against humanity—extermination

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the perpetrator's conduct constitutes, or takes place as part of, a mass killing of members of a civilian population; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for life.

(2) In subsection (1):

causes the death of includes causes death by intentionally inflicting conditions of life (such as the deprivation of access to food or medicine) intended to bring about the destruction of part of a population.

268.10 Crime against humanity—enslavement

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons (including the exercise of a power in the course of trafficking in persons, in particular women and children); and

(b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

exercises any or all of the powers attaching to the right of ownership over a person includes purchases, sells, lends or barters a person or imposes on a person a similar deprivation of liberty and also includes exercise a power arising from a debt incurred or contract made by a person.

268.11 Crime against humanity—deportation or forcible transfer of population

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator forcibly displaces one or more persons, by expulsion or other coercive acts, from an area in which the person or persons are lawfully present to another country or location; and

(b) the forcible displacement is contrary to paragraph 4 of article 12 or article 13 of the Covenant; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the lawfulness of the presence of the person or persons in the area; and

(d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to paragraph (1)(b).

(3) In subsection (1):

forcibly displaces one or more persons includes displaces one or more persons:

(a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or

(b) by taking advantage of a coercive environment.

268.12 Crime against humanity—imprisonment or other severe deprivation of physical liberty

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator imprisons one or more persons or otherwise severely deprives one or more persons of physical liberty; and

(b) the perpetrator's conduct violates article 9, 14 or 15 of the Covenant; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to paragraph (1)(b).

268.13 Crime against humanity—torture

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and

(b) the pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

268.14 Crime against humanity—rape

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator sexually penetrates another person without the consent of that person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section:

sexually penetrate means:

(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

(b) penetrate (to any extent) the mouth of a person by the penis of another person; or

(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(5) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.15 Crime against humanity—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to enter into or remain in sexual slavery; and

(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) For the purposes of this section, ***sexual slavery*** is the condition of a person who provides sexual services and who, because of the use of force or threats:

(a) is not free to cease providing sexual services; or

(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

threat means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

268.16 Crime against humanity—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.

268.17 Crime against humanity—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and

(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

268.18 Crime against humanity—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent does not include consent effected by deception or by natural, induced or age-related incapacity.

268.19 Crime against humanity—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.14 to 268.18; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

(3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.20 Crime against humanity—persecution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely deprives one or more persons of any of the rights referred to in paragraph (b); and

(b) the rights are those guaranteed in articles 6, 7, 8 and 9, paragraph 2 of article 14, article 18, paragraph 2 of article 20, paragraph 2 of article 23 and article 27 of the Covenant; and

(c) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and

(d) the grounds on which the targeting is based are political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised in paragraph 1 of article 2 of the Covenant; and

(e) the perpetrator's conduct is committed in connection with another act that is:

(i) a proscribed inhumane act; or

(ii) genocide; or

(iii) a war crime; and

(f) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to:

(a) the physical element of the offence referred to in paragraph (1)(a) that the rights are those referred to in paragraph (1)(b); and

(b) paragraphs (1)(b) and (d).

268.21 Crime against humanity—enforced disappearance of persons

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator arrests, detains or abducts one or more persons; and

(b) the arrest, detention or abduction is carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and

(c) the perpetrator intends to remove the person or persons from the protection of the law for a prolonged period of time; and

(d) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population; and

(e) after the arrest, detention or abduction, the government or organisation refuses to acknowledge the deprivation of freedom of, or to give information on the fate or whereabouts of, the person or persons.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) one or more persons have been arrested, detained or abducted; and

(b) the arrest, detention or abduction was carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and

(c) the perpetrator refuses to acknowledge the deprivation of freedom, or to give information on the fate or whereabouts, of the person or persons; and

(d) the refusal occurs with the authorisation, support or acquiescence of the government of the country or the political organisation; and

(e) the perpetrator knows that, or is reckless as to whether, the refusal was preceded or accompanied by the deprivation of freedom; and

(f) the perpetrator intends that the person or persons be removed from the protection of the law for a prolonged period of time; and

(g) the arrest, detention or abduction occurred, and the refusal occurs, as part of a widespread or systematic attack directed against a civilian population; and

(h) the perpetrator knows that the refusal is part of, or intends the refusal to be part of, such an attack.

Penalty: Imprisonment for 17 years.

268.22 Crime against humanity—apartheid

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act (as defined by the Dictionary) or an act that is of a nature and gravity similar to any such proscribed inhumane act; and

(b) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the character of the act; and

(d) the perpetrator intends to maintain the regime by the conduct; and

(e) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 17 years.

268.23 Crime against humanity—other inhumane act

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act; and

(b) the act is of a character similar to another proscribed inhumane act as defined by the Dictionary; and

(c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty: Imprisonment for 25 years.

Subdivision D—War crimes that are grave breaches of the Geneva Conventions and of Protocol I to the Geneva Conventions

268.24 War crime—wilful killing

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) Strict liability applies to paragraph (1)(b).

268.25 War crime—torture

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

(b) the perpetrator inflicts the pain or suffering for the purpose of:

(i) obtaining information or a confession; or

(ii) a punishment, intimidation or coercion; or

(iii) a reason based on discrimination of any kind; and

(c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(c).

268.26 War crime—inhumane treatment

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

268.27 War crime—biological experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a particular biological experiment; and

(b) the experiment seriously endangers the physical or mental health or integrity of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(d).

268.28 War crime—wilfully causing great suffering

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

268.29 War crime—destruction and appropriation of property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or appropriates property; and

(b) the destruction or appropriation is not justified by military necessity; and

(c) the destruction or appropriation is extensive and carried out unlawfully and wantonly; and

(d) the property is protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(2) Strict liability applies to paragraph (1)(d).

268.30 War crime—compelling service in hostile forces

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator coerces one or more persons, by act or threat:

(i) to take part in military operations against that person's or those persons' own country or forces; or

(ii) otherwise to serve in the forces of an adverse power; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) Strict liability applies to paragraph (1)(b).

268.31 War crime—denying a fair trial

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of a fair and regular trial by denying to the person any of the judicial guarantees referred to in paragraph (b); and

(b) the judicial guarantees are those defined in articles 84, 99 and 105 of the Third Geneva Convention and articles 66 and 71 of the Fourth Geneva Convention; and

(c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) Strict liability applies to:

(a) the physical element of the offence referred to in paragraph (1)(a) that the judicial guarantees are those referred to in paragraph (1)(b); and

(b) paragraphs (1)(b) and (c).

268.32 War crime—unlawful deportation or transfer

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully deports or transfers one or more persons to another country or to another location; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to paragraph (1)(b).

268.33 War crime—unlawful confinement

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines or continues to confine one or more persons to a certain location; and

(b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to paragraph (1)(b).

268.34 War crime—taking hostages

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and

(b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and

(c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and

(d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) Strict liability applies to paragraph (1)(d).

Subdivision E—Other serious war crimes that are committed in the course of an international armed conflict

268.35 War crime—attacking civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.36 War crime—attacking civilian objects

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is not a military objective; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.37 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol I to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions or Protocol I to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

(3) Strict liability applies to paragraphs (1)(c) and (2)(c).

268.38 War crime—excessive incidental death, injury or damage

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator launches an attack; and
(b) the perpetrator knows that the attack will cause incidental death or injury to civilians; and
(c) the perpetrator knows that the death or injury will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator launches an attack; and
(b) the perpetrator knows that the attack will cause:
(i) damage to civilian objects; or
(ii) widespread, long-term and severe damage to the natural environment; and
(c) the perpetrator knows that the damage will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 20 years.

268.39 War crime—attacking undefended places

A person (the ***perpetrator***) commits an offence if:
(a) the perpetrator attacks or bombards one or more towns, villages, dwellings or buildings; and
(b) the towns, villages, dwellings or buildings are open for unresisted occupation; and
(c) the towns, villages, dwellings or buildings do not constitute military objectives; and
(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.40 War crime—killing or injuring a person who is hors de combat

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator kills one or more persons; and

(b) the person or persons are *hors de combat*; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator injures one or more persons; and

(b) the person or persons are *hors de combat*; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.41 War crime—improper use of a flag of truce

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag of truce; and

(b) the perpetrator uses the flag in order to feign an intention to negotiate when there is no such intention on the part of the perpetrator; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.42 War crime—improper use of a flag, insignia or uniform of the adverse party

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag, insignia or uniform of the adverse party; and

(b) the perpetrator uses the flag, insignia or uniform while engaged in an attack or in order to shield, favour, protect or impede military operations; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.43 War crime—improper use of a flag, insignia or uniform of the United Nations

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses a flag, insignia or uniform of the United Nations; and

(b) the perpetrator uses the flag, insignia or uniform without the authority of the United Nations; and

(c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and

(d) the perpetrator's conduct results in death or serious personal injury; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.44 War crime—improper use of the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses an emblem; and

(b) the emblem is one of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator uses the emblem for combatant purposes to invite the confidence of an adversary in order to lead him or her to believe that the perpetrator is entitled to protection, or that the adversary is obliged to accord protection to the perpetrator, with intent to betray that confidence; and

(d) the perpetrator knows of, or is reckless as to, the illegal nature of such use; and

(e) the perpetrator's conduct results in death or serious personal injury; and

(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) Strict liability applies to paragraph (1)(b).

(3) In this section:

emblem means any emblem, identity card, sign, signal, insignia or uniform.

268.45 War crime—transfer of population

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator:

(i) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the transfer, directly or indirectly, of parts of the civilian population of the perpetrator's own country into territory that the country occupies; or

(ii) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the deportation or transfer of all or parts of the population of territory occupied by the

perpetrator's own country within or outside that territory; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.46 War crime—attacking protected objects

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not military objectives:

(i) buildings dedicated to religion, education, art, science or charitable purposes;

(ii) historic monuments;

(iii) hospitals or places where the sick and wounded are collected; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

268.47 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.48 War crime—medical or scientific experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment causes the death of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of an adverse party; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.49 War crime—treacherously killing or injuring

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator kills the person or persons; and

(c) the perpetrator makes use of that confidence or belief in killing the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator injures the person or persons; and

(c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.50 War crime—denying quarter

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator declares or orders that there are to be no survivors; and

(b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and

(c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.51 War crime—destroying or seizing the enemy's property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or seizes certain property; and

(b) the property is property of an adverse party; and

(c) the property is protected from the destruction or seizure under article 18 of the Third Geneva Convention, article 53 of the Fourth Geneva Convention or article 54 of Protocol I to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

(e) the destruction or seizure is not justified by military necessity; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(2) Strict liability applies to paragraph (1)(c).

268.52 War crime—depriving nationals of the adverse power of rights or actions

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator effects the abolition, suspension or termination of admissibility in a court of law of certain rights or actions; and

(b) the abolition, suspension or termination is directed at the nationals of an adverse party; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

268.53 War crime—compelling participation in military operations

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator coerces one or more persons by act or threat to take part in military operations against that person's or those persons' own country or forces; and

(b) the person or persons are nationals of an adverse party; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) It is not a defence to a prosecution for an offence against subsection (1) that the person or persons were in the service of the perpetrator at a time before the beginning of the international armed conflict.

268.54 War crime—pillaging

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator appropriates certain property; and

(b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and

(c) the appropriation is without the consent of the owner; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.55 War crime—employing poison or poisoned weapons

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs a substance or employs a weapon that releases a substance as a result of its employment; and

(b) the substance is such that it causes death or serious damage to health in the ordinary course of events through its toxic properties; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.56 War crime—employing prohibited gases, liquids, materials or devices

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs a gas or other analogous substance or device; and

(b) the gas, substance or device is such that it causes death or serious damage to health in the ordinary course of events through its asphyxiating or toxic properties; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.57 War crime—employing prohibited bullets

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator employs certain bullets; and

(b) the bullets are such that their use violates the Hague Declaration because they expand or flatten easily in the human body; and

(c) the perpetrator knows that, or is reckless as to whether, the nature of the bullets is such that their employment will uselessly aggravate suffering or the wounding effect; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

268.58 War crime—outrages upon personal dignity

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and

(b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.59 War crime—rape

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator sexually penetrates another person without the consent of that person; and

(b) the perpetrator knows about, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows about, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section:

sexually penetrate means:

(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

(b) penetrate (to any extent) the mouth of a person by the penis of another person; or

(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(5) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.60 War crime—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to enter into or remain in sexual slavery; and

(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) For the purposes of this section, ***sexual slavery*** is the condition of a person who provides sexual services and who, because of the use of force or threats:

(a) is not free to cease providing sexual services; or

(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

threat means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

268.61 War crime—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought

to whether or not the person is consenting to the act or acts of a sexual nature.

268.62 War crime—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and

(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was effected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

268.63 War crime—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent does not include consent effected by deception or by natural, induced or age-related incapacity.

268.64 War crime—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.59 to 268.63; and

(c) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

(3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.65 War crime—using protected persons as shields

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses the presence of one or more civilians, prisoners of war, military, medical or religious personnel or persons who are *hors de combat*; and

(b) the perpetrator intends the perpetrator's conduct to render a military objective immune from attack or to shield, favour or impede military operations; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty:

(a) if the conduct results in the death of any of the persons referred to in paragraph (a)—imprisonment for life; or

(b) otherwise—imprisonment for 17 years.

(2) In this section:

religious personnel includes non-confessional, non-combatant military personnel carrying out a similar function to religious personnel.

268.66 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more persons; and

(b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and

(b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

(3) Strict liability applies to paragraphs (1)(b) and (2)(b).

268.67 War crime—starvation as a method of warfare

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses as a method of warfare:

(i) any intentional deprivation of civilians of objects indispensable to their survival; or

(ii) without limiting subparagraph (i)—the wilful impeding of relief supplies for civilians; and

(b) if subparagraph (a)(ii) applies—the relief supplies are provided for under the Geneva Conventions; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

268.68 War crime—using, conscripting or enlisting children

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses one or more persons to participate actively in hostilities; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator conscripts one or more persons into the national armed forces; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator enlists one or more persons into the national armed forces; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

Subdivision F—War crimes that are serious violations of article 3 common to the Geneva Conventions and are committed in the course of an armed conflict that is not an international armed conflict

268.69 Definition of religious personnel

In this Subdivision:

religious personnel includes non-confessional, non-combatant military personnel carrying out a similar function to religious personnel.

268.70 War crime—murder

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes the death of one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.71 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling

or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.72 War crime—cruel treatment

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.73 War crime—torture

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

(b) the perpetrator inflicts the pain or suffering for the purpose of:

(i) obtaining information or a confession; or

(ii) a punishment, intimidation or coercion; or

(iii) a reason based on discrimination of any kind; and

(c) the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.74 War crime—outrages upon personal dignity

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and

(b) the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(3) To avoid doubt, a reference in this section to a person or persons who are not, or a dead person or dead persons who were not before his, her or their death, taking an active part in the hostilities includes a reference to:

(a) a person or persons who:

(i) are *hors de combat*; or

(ii) are civilians, medical personnel or religious personnel who are not taking an active part in the hostilities; or

(b) a dead person or dead persons who, before his, her or their death:

(i) were *hors de combat*; or

(ii) were civilians, medical personnel or religious personnel who were not taking an active part in the hostilities;

as the case may be.

268.75 War crime—taking hostages

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and

(b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and

(c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and

(d) the person or persons are not taking an active part in the hostilities; and

(e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.76 War crime—sentencing or execution without due process

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator passes a sentence on one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) either of the following applies:

(i) there was no previous judgment pronounced by a court;

(ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and

(e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and

(f) the perpetrator knows of:

(i) if subparagraph (d)(i) applies—the absence of a previous judgment; or

(ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and

(g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator executes one or more persons; and

(b) the person or persons are not taking an active part in the hostilities; and

(c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and

(d) either of the following applies:

(i) there was no previous judgment pronounced by a court;

(ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and

(e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and

(f) the perpetrator knows of:

(i) if subparagraph (d)(i) applies—the absence of a previous judgment; or

(ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and

(g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(3) Strict liability applies to paragraphs (1)(e) and (2)(e).

(4) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:

(a) a person or persons who are *hors de combat*; or

(b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

Subdivision G—War crimes that are other serious violations of the laws and customs applicable in an armed conflict that is not an international armed conflict

268.77 War crime—attacking civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

268.78 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more persons; and

(b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and

(b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and

(c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

(3) Strict liability applies to paragraphs (1)(b) and (2)(b).

268.79 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol II to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and

(c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions and Protocol II to the Geneva Conventions; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

(3) Strict liability applies to paragraphs (1)(c) and (2)(c).

268.80 War crime—attacking protected objects

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not military objectives:

(i) buildings dedicated to religion, education, art, science or charitable purposes;

(ii) historic monuments;

(iii) hospitals or places where the sick and wounded are collected; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

268.81 War crime—pillaging

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator appropriates certain property; and

(b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and

(c) the appropriation is without the consent of the owner; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

268.82 War crime—rape

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator sexually penetrates another person without the consent of that person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

(b) the perpetrator knows of, or is reckless as to, the lack of consent; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section:

sexually penetrate means:

(a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

(b) penetrate (to any extent) the mouth of a person by the penis of another person; or

(c) continue to sexually penetrate as defined in paragraph (a) or (b).

(5) In this section, being ***reckless*** as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.83 War crime—sexual slavery

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes another person to enter into or remain in sexual slavery; and

(b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) For the purposes of this section, ***sexual slavery*** is the condition of a person who provides sexual services and who, because of the use of force or threats:

(a) is not free to cease providing sexual services; or

(b) is not free to leave the place or area where the person provides sexual services.

(3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

threat means:

(a) a threat of force; or

(b) a threat to cause a person's deportation; or

(c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

268.84 War crime—enforced prostitution

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or

(b) taking advantage of a coercive environment.

(3) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.85 War crime—forced pregnancy

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and

(b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group as such; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

(3) To avoid doubt, this section does not affect any other law of the Commonwealth or any law of a State or Territory.

268.86 War crime—enforced sterilisation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator deprives one or more persons of biological reproductive capacity; and

(b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and

(c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent does not include consent effected by deception or by natural, induced or age-related incapacity.

268.87 War crime—sexual violence

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator does either of the following:

(i) commits an act or acts of a sexual nature against one or more persons;

(ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

(b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.82 to 268.87; and

(c) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

(3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

(a) the person submits to the act because of force or the fear of force to the person or to someone else;

(b) the person submits to the act because the person is unlawfully detained;

(c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;

(d) the person is incapable of understanding the essential nature of the act;

(e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

(f) the person submits to the act because of psychological oppression or abuse of power;

(g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

threat of force or coercion includes:

(a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against the person or another person; or

(b) taking advantage of a coercive environment.

(4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.88 War crime—using, conscripting or enlisting children

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator uses one or more persons to participate actively in hostilities; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator conscripts one or more persons into an armed force or group; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

(3) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator enlists one or more persons into an armed force or group; and

(b) the person or persons are under the age of 15 years; and

(c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

268.89 War crime—displacing civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator orders a displacement of a civilian population; and

(b) the order is not justified by the security of the civilians involved or by imperative military necessity; and

(c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

268.90 War crime—treacherously killing or injuring

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator kills the person or persons; and

(c) the perpetrator makes use of that confidence or belief in killing the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and

(b) the perpetrator injures the person or persons; and

(c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and

(d) the person or persons belong to an adverse party; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.91 War crime—denying quarter

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator declares or orders that there are to be no survivors; and

(b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and

(c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

268.92 War crime—mutilation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct causes the death of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and

(b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.93 War crime—medical or scientific experiments

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment causes the death of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

(2) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical or scientific experiment; and

(b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and

(d) the person or persons are in the power of another party to the conflict; and

(e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.94 War crime—destroying or seizing an adversary's property

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator destroys or seizes certain property; and

(b) the property is property of an adversary; and

(c) the property is protected from the destruction or seizure under article 14 of Protocol II to the Geneva Conventions; and

(d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

(e) the destruction or seizure is not justified by military necessity; and

(f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years

(2) Strict liability applies to paragraph (1)(c).

Subdivision H—War crimes that are grave breaches of Protocol I to the Geneva Conventions

268.95 War crime—medical procedure

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator subjects one or more persons to a medical procedure; and

(b) the procedure seriously endangers the physical or mental health, or the integrity, of the person or persons; and

(c) the perpetrator's conduct is not justified by the state of health of the person or persons; and

(d) the perpetrator knows that, or is reckless as to whether, the conduct is consistent with generally accepted medical standards that would be applied under similar medical circumstances to persons who are of the same nationality as the perpetrator and are in no way deprived of liberty; and

(e) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, the country of the perpetrator as a result of an international armed conflict; and

(f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.96 War crime—removal of blood, tissue or organs for transplantation

(1) A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator removes from one or more persons blood, tissue or organs for transplantation; and

(b) in the case of the removal of blood—the removal:

(i) is not for transfusion; or

(ii) is for transfusion without the consent of the person or persons; and

(c) in the case of the removal of skin—the removal:

(i) is not for grafting; or

(ii) is for grafting without the consent of the person or persons; and

(d) the intent of the removal is non-therapeutic; and

(e) the removal is not carried out under conditions consistent with generally accepted medical standards and controls designed for the benefit of the person or persons and of the recipient; and

(f) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and

(g) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) In subsection (1):

consent means consent given voluntarily and without any coercion or inducement.

268.97 War crime—attack against works or installations containing dangerous forces resulting in excessive loss of life or injury to civilians

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator launches an attack against works or installations containing dangerous forces; and

(b) the attack is such that it will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and

(c) the perpetrator knows that the attack will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent; and

(d) the attack results in death or serious injury to body or health; and

(e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.98 War crime—attacking undefended places or demilitarized zones

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator attacks one or more towns, villages, dwellings, buildings or demilitarized zones; and

(b) the towns, villages, dwellings or buildings are open for unresisted occupation; and

(c) the attack results in death or serious injury to body or health; and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.99 War crime—unjustifiable delay in the repatriation of prisoners of war or civilians

(1) A person (the ***perpetrator***) commits an offence if:

(a) one or more persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and

(b) the perpetrator unjustifiably delays the repatriation of the person or persons to the person's own country or the persons' own countries; and

(c) the delay is in violation of Part IV of the Third Geneva Convention or Chapter XII of Section IV of Part III of the Fourth Geneva Convention.

Penalty: Imprisonment for 10 years.

(2) Strict liability applies to paragraph (1)(c).

268.100 War crime—apartheid

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act or is of a nature and gravity similar to any proscribed inhumane act; and

(b) the perpetrator knows of, or is reckless at to, the factual circumstances that establish the character of the act; and

(c) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and

(d) the perpetrator intends to maintain the regime by the conduct; and

(e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.101 War crime—attacking protected objects

A person (the ***perpetrator***) commits an offence if:

(a) the perpetrator directs an attack; and

(b) the object of the attack is any one or more of the following that are not used in support of the military effort and are not located in the immediate proximity of military objectives:

(i) clearly recognised historic monuments;

(ii) works of art;

(iii) places of worship; and

(c) the monuments, works of art and places of worship constitute the cultural or spiritual heritage of peoples and have been given special protection by special arrangement (for example, within the framework of a competent international organisation); and

(d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

Subdivision J—Crimes against the administration of the justice of the International Criminal Court

268.102 Perjury

(1) A person commits the offence of perjury if:

(a) the person makes a sworn statement in or for the purposes of a proceeding before the International Criminal Court; and

(b) the statement is false.

Penalty: Imprisonment for 10 years.

(2) A person who is an interpreter commits the offence of perjury if:

(a) the person, by a sworn statement, gives an interpretation of a statement or other thing in or for the purposes of a proceeding before the International Criminal Court; and

(b) the interpretation is false or misleading.

Penalty: Imprisonment for 10 years.

268.103 Falsifying evidence

(1) A person commits an offence if the person makes false evidence with the intention of:

(a) influencing a decision on the institution of a proceeding before the International Criminal Court; or

(b) influencing the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

(2) A person commits an offence if the person:

(a) uses evidence that is false evidence and that the person believes is false evidence; and

(b) is reckless as to whether or not the use of the evidence could:

(i) influence a decision on the institution of a proceeding before the International Criminal Court; or

(ii) influence the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

(3) For the purposes of this section, ***making*** evidence includes altering evidence, but does not include perjury.

268.104 Destroying or concealing evidence

(1) A person commits an offence if the person destroys or conceals evidence with the intention of:

(a) influencing a decision on the institution of a proceeding before the International Criminal Court; or

(b) influencing the outcome of such a proceeding.

Penalty: Imprisonment for 7 years.

(2) For the purposes of this section, ***destroying*** evidence includes making the evidence illegible, indecipherable or otherwise incapable of being identified.

268.105 Deceiving witnesses

A person commits an offence if the person deceives another person with the intention that the other person or a third person will:

(a) give false evidence in a proceeding before the International Criminal Court; or

(b) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

268.106 Corrupting witnesses or interpreters

(1) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:

(a) not attend as a witness at a proceeding before the International Criminal Court; or

(b) give false evidence at such a proceeding; or

(c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if the person asks for, or receives or agrees to receive, a benefit for himself, herself or another person with the intention that he, she or another person will:

(a) not attend as a witness at a proceeding before the International Criminal Court; or

(b) give false evidence at such a proceeding; or

(c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 5 years.

(3) A person commits an offence if the person provides, or offers or promises to provide, a benefit to another person with the intention that the other person or a third person will:

(a) not attend as an interpreter at a proceeding before the International Criminal Court; or

(b) give a false or misleading interpretation as an interpreter at such a proceeding.

Penalty: Imprisonment for 5 years.

268.107 Threatening witnesses or interpreters

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:

(a) not attend as a witness at a proceeding before the International Criminal Court; or

(b) give false evidence at such a proceeding; or

(c) withhold true evidence at such a proceeding.

Penalty: Imprisonment for 7 years.

(2) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:

(a) not attend as an interpreter at a proceeding before the International Criminal Court; or

(b) give a false or misleading interpretation as an interpreter in such a proceeding.

Penalty: Imprisonment for 7 years.

268.108 Preventing witnesses or interpreters

(1) A person commits an offence if the person, by his or her conduct, intentionally prevents another person from attending as a witness or interpreter at a proceeding before the International Criminal Court.

Penalty: Imprisonment for 5 years.

(2) This section does not apply to conduct that constitutes an offence against section 268.105, 268.106, 268.107, 268.109 or 268.110.

268.109 Preventing production of things in evidence

A person commits an offence if the person, by his or her conduct, intentionally prevents another person from producing in evidence at a proceeding before the International Criminal Court a thing that is legally required to be produced.

Penalty: Imprisonment for 5 years.

268.110 Reprisals against witnesses

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person who was a witness in a proceeding before the International Criminal Court:

(a) because of anything done by the other person in or for the purposes of the proceeding; and

(b) in the belief that the other person was a witness who had done that thing.

Penalty: Imprisonment for 5 years.

(2) It is a defence to a prosecution for an offence against subsection (1) that:

(a) the detriment to the witness was not (apart from this section) an offence; and

(b) the witness committed perjury in the proceeding before the International Criminal Court.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3).

(3) In this section:

witness includes:

(a) a person who attends at a proceeding before the International Criminal Court as a witness but is not called as a witness; or

(b) an interpreter.

268.111 Reprisals against officials of the International Criminal Court

(1) A person commits an offence if the person causes or threatens to cause any detriment to another person who is an official of the International Criminal Court:

(a) because of anything done by the other person; and

(b) in the belief that the other person was an official of that Court who had done that thing for the purposes of a proceeding before that Court.

Penalty: Imprisonment for 5 years.

(2) A person commits an offence if the person causes or threatens to cause any detriment to another person who is an official of the International Criminal Court:

(a) because of anything done by a third person who is an official of that Court; and

(b) in the belief that the third person was an official of that Court who had done that thing for the purposes of a proceeding before that Court.

Penalty: Imprisonment for 5 years.

268.112 Perverting the course of justice

(1) A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice in respect of the International Criminal Court.

Penalty: Imprisonment for 5 years.

(2) This section does not apply to conduct that constitutes the publication of any matter.

(3) In this section:

perverts includes obstructs, prevents or defeats.

268.113 Receipt of a corrupting benefit by an official of the International Criminal Court

(1) A person who is an official of the International Criminal Court commits an offence if:

(a) the person:

(i) asks for a benefit for himself, herself or another person; or

(ii) receives or obtains a benefit for himself, herself or another person; or

(iii) agrees to receive or obtain a benefit for himself, herself or another person; and

(b) the person does so with the intention that the exercise of the person's duties as an official of the International Criminal Court will be influenced.

Penalty: Imprisonment for 10 years.

(2) For the purposes of subsection (1), it is immaterial whether the benefit is in the nature of a reward.

268.114 Subdivision not to apply to certain conduct

(1) This Subdivision does not apply to a person in respect of:

(a) conduct that results in a failure or refusal to issue a certificate under section 22 or 29 of the *International Criminal Court Act 2002*; or

(b) a failure or refusal to issue such a certificate; or

(c) conduct engaged in reliance on the absence of such a certificate.

(2) In this section:

conduct includes any one or more acts or omissions.

Subdivision K—Miscellaneous

268.115 Responsibility of commanders and other superiors

(1) The criminal responsibility imposed by this section is in addition to other grounds of criminal responsibility under the law in force in Australia for acts or omissions that are offences under this Division.

(2) A military commander or person effectively acting as a military commander is criminally responsible for offences under this Division committed by forces under his or her effective command and control, or effective authority and control, as the case may be, as a result of his or her failure to exercise control properly over those forces, where:

(a) the military commander or person either knew or, owing to the circumstances at the time, was reckless as to whether the forces were committing or about to commit such offences; and

(b) the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in subsection (2), a superior is criminally responsible for offences against this Division committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over those subordinates, where:

(a) the superior either knew, or consciously disregarded information that clearly indicated, that the subordinates were committing or about to commit such offences; and

(b) the offences concerned activities that were within the effective responsibility and control of the superior; and

(c) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

268.116 Defence of superior orders

(1) The fact that genocide or a crime against humanity has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, does not relieve the person of criminal responsibility.

(2) Subject to subsection (3), the fact that a war crime has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, does not relieve the person of criminal responsibility.

(3) It is a defence to a war crime that:

(a) the war crime was committed by a person pursuant to an order of a Government or of a superior, whether military or civilian; and

(b) the person was under a legal obligation to obey the order; and

(c) the person did not know that the order was unlawful; and

(d) the order was not manifestly unlawful.

Note: A defendant bears an evidential burden in establishing the elements in subsection (3). See subsection 13.3(3).

268.117 Geographical jurisdiction

(1) Section 15.4 (extended geographical jurisdiction—Category D) applies to genocide, crimes against humanity and war crimes.

(2) Section 15.3 (extended geographical jurisdiction—Category C) applies to crimes against the administration of the justice of the International Criminal Court.

268.118 Double jeopardy

A person cannot be tried by a federal court or a court of a State or Territory for an offence under this Division if the person has already been convicted or acquitted by the International Criminal Court for an offence constituted by substantially the same conduct as constituted the offence under this Division.

268.119 Offences related to exercise of jurisdiction of International Criminal Court

(1) A person must not:

(a) intentionally contravene an order that the International Criminal Court makes while sitting in Australia; or

(b) otherwise intentionally hinder the International Criminal Court in performing its functions while sitting in Australia.

Penalty: Imprisonment for 2 years.

(2) In this section:

Australia includes all the external Territories.

268.120 Saving of other laws

This Division is not intended to exclude or limit any other law of the Commonwealth or any law of a State or Territory.

268.121 Bringing proceedings under this Division

(1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.

(2) An offence against this Division may only be prosecuted in the name of the Attorney-General.

(3) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.

268.122 Attorney-General's decisions in relation to consents to be final

(1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to give, or to refuse to give, a consent under section 268.121:

(a) is final; and

(b) must not be challenged, appealed against, reviewed, quashed or called in question; and

(c) is not subject to prohibition, mandamus, injunction, declaration or certiorari.

(2) The reference in subsection (1) to a decision includes a reference to the following:

(a) a decision to vary, suspend, cancel or revoke a consent that has been given;

(b) a decision to impose a condition or restriction in connection with the giving of, or a refusal to give, a consent or to remove a condition or restriction so imposed;

(c) a decision to do anything preparatory to the making of a decision to give, or to refuse to give, a consent or preparatory to the making of a decision referred to in paragraph (a) or (b), including a decision for the taking of evidence or the holding of an inquiry or investigation;

(d) a decision doing or refusing to do anything else in connection with a decision to give, or to refuse to give, a consent or a decision referred to in paragraph (a), (b) or (c);

(e) a failure or refusal to make a decision whether or not to give a consent or a decision referred to in a paragraph (a), (b), (c) or (d).

(3) Any jurisdiction of the High Court referred to in subsection (1) is exclusive of the jurisdiction of any other court.

268.123 Legal representation

The provisions of section 12 (other than subsection 12(2)) of the *Geneva Conventions Act 1957* apply in relation to the trial of a person for an offence against this Division in the same way as they apply in relation to the trial of a protected prisoner of war.

268.124 Proof of application of Geneva Conventions or Protocol I to the Geneva Conventions

If, in proceedings under this Division in respect of a grave breach of any of the Geneva Conventions or of Protocol I to the Geneva Conventions, a question arises under:

(a) Article 2 of the Geneva Convention concerned (which relates to the circumstances in which the Convention applies); or

(b) Article 1 of that Protocol (which relates to the circumstances in which the Protocol applies);

a certificate signed by the Minister responsible for legislation relating to foreign affairs certifying to any matter relevant to that question is prima facie evidence of the matter so certified.

3 The Schedule (the Dictionary in the Criminal Code)

Insert:

attack directed against a civilian population means a course of conduct involving the multiple commission of any one or more proscribed inhumane acts against any civilian population pursuant to, or in furtherance of, a state or organisational policy to engage in that course of conduct.

4 The Schedule (the Dictionary in the Criminal Code)

Insert:

benefit includes any advantage and is not limited to property.

5 The Schedule (the Dictionary in the Criminal Code)

Insert:

Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986*.

6 The Schedule (the Dictionary in the Criminal Code)

Insert:

crime against humanity means an offence under Subdivision C of Division 268.

7 The Schedule (the Dictionary in the Criminal Code)

Insert:

crime against the administration of the justice of the International Criminal Court means an offence under Subdivision J of Division 268.

8 The Schedule (the Dictionary in the Criminal Code)

Insert:

detriment includes any disadvantage and is not limited to personal injury or to loss of or damage to property.

9 The Schedule (the Dictionary in the Criminal Code)

Insert:

distinctive emblems of the Geneva Conventions means the emblems, identity cards, signs, signals, insignia or uniforms to which subsection 15(1) of the *Geneva Conventions Act 1957* applies.

10 The Schedule (the Dictionary in the Criminal Code)

Insert:

evidence includes anything that may be used as evidence.

11 The Schedule (the Dictionary in the Criminal Code)

Insert:

First Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 1 to the *Geneva Conventions Act 1957*.

12 The Schedule (the Dictionary in the Criminal Code)

Insert:

Fourth Geneva Convention means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of the English text

of which (not including the annexes) is set out in Schedule 4 to the *Geneva Conventions Act 1957*.

13 The Schedule (the Dictionary in the Criminal Code)

Insert:

Geneva Conventions means the First Geneva Convention, the Second Geneva Convention, the Third Geneva Convention and the Fourth Geneva Convention.

14 The Schedule (the Dictionary in the Criminal Code)

Insert:

genocide means an offence under Subdivision B of Division 268.

15 The Schedule (the Dictionary in the Criminal Code)

Insert:

Hague Declaration means the Hague Declarations Concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body, adopted at the Hague on 29 July 1899.

16 The Schedule (the Dictionary in the Criminal Code)

Insert:

hors de combat: a person is *hors de combat* if:

(a) the person is in the power of an adverse party; and

(b) the person:

(i) clearly expresses an intention to surrender; or

(ii) has been rendered unconscious or is otherwise incapacitated by wounds or sickness and is therefore incapable of defending himself or herself; and

(c) the person abstains from any hostile act and does not attempt to escape.

17 The Schedule (the Dictionary in the Criminal Code)

Insert:

ICC Statute means the Statute of the International Criminal Court done at Rome on 17 July 1998, a copy of the English text of which

is set out in Schedule 1 to the *International Criminal Court Act 2002*.

18 The Schedule (the Dictionary in the Criminal Code)

Insert:

international armed conflict includes a military occupation.

19 The Schedule (the Dictionary in the Criminal Code)

Insert:

International Criminal Court means the International Criminal Court established under the ICC Statute.

20 The Schedule (the Dictionary in the Criminal Code)

Insert:

interpreter includes a person who interprets signs or other things made or done by a person who cannot speak adequately for the purpose of giving evidence in a proceeding before the International Criminal Court.

21 The Schedule (the Dictionary in the Criminal Code)

Insert:

proscribed inhumane act means any of the following acts:

(a) an act that is described in paragraph 268.8(a);

(b) an act that is described in paragraph 268.9(1)(a) and is committed as mentioned in paragraph 268.9(1)(b);

(c) an act that is described in paragraph 268.10(1)(a);

(d) an act that is described in paragraph 268.11(1)(a) and to which paragraph 268.11(1)(b) applies;

(e) an act that is described in paragraph 268.12(1)(a) and to which paragraph 268.12(1)(b) applies;

(f) an act that is described in paragraph 268.13(a) and to which paragraph 268.13(b) applies;

(g) an act that is described in paragraph 268.14(1)(a) or (2)(a);

(h) an act that is described in paragraph 268.15(1)(a);

(i) an act that is described in paragraph 268.16(1)(a) and to which paragraph 268.16(1)(b) applies;

(j) an act that is described in paragraph 268.17(1)(a) and to which paragraph 268.17(1)(b) applies;

(k) an act that is described in paragraphs 268.18(1)(a) and (b) and to which paragraph 268.18(1)(c) applies;

(l) an act that is described in paragraph 268.19(1)(a) and is of the gravity mentioned in paragraph 268.19(1)(b);

(m) an act that is described in paragraph 268.20(1)(a) and is committed as mentioned in paragraphs 268.20(1)(c), (d) and (e);

(n) an act that is described in paragraph 268.21(1)(a) and to which paragraphs 268.21(1)(b) and (c) apply;

(o) an act that is described in paragraph 268.21(2)(c) and is committed as mentioned in paragraph 268.21(2)(d);

(p) an act that is described in paragraph 268.22(a) and is committed as mentioned in paragraph 268.22(b);

(q) an act that is described in paragraph 268.23(a) and to which paragraph 268.23(b) applies.

22 The Schedule (the Dictionary in the Criminal Code)

Insert:

Protocol I to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 10 June 1977, a copy of the English text of which is set out in Schedule 5 to the *Geneva Conventions Act 1957*.

23 The Schedule (the Dictionary in the Criminal Code)

Insert:

Protocol II to the Geneva Conventions means the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts done at Geneva on 10 June 1977.

24 The Schedule (the Dictionary in the Criminal Code)

Insert:

Protocols to the Geneva Conventions means Protocol I to the Geneva Conventions and Protocol II to the Geneva Conventions.

25 The Schedule (the Dictionary in the Criminal Code)

Insert:

Second Geneva Convention means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 2 to the *Geneva Conventions Act 1957*.

26 The Schedule (the Dictionary in the Criminal Code)

Insert:

sworn statement means an oral statement made on oath or affirmation or a statement in a document verified on oath or affirmation.

27 The Schedule (the Dictionary in the Criminal Code)

Insert:

Third Geneva Convention means the Geneva Convention relative to the Protection of Prisoners of War, adopted at Geneva on 12 August 1949, a copy of the English text of which (not including the annexes) is set out in Schedule 3 to the *Geneva Conventions Act 1957*.

28 The Schedule (the Dictionary in the Criminal Code)

Insert:

threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

29 The Schedule (the Dictionary in the Criminal Code)

Insert:

war crime means an offence under Subdivision D, E, F, G or H of Division 268.

Schedule 2—Amendment of the Director of Public Prosecutions Act 1983

1 Paragraph 6(1)(k)

After "*International War Crimes Tribunals Act 1995*", insert ", the *International Criminal Court Act 2002*".

Schedule 3—Amendment of the Geneva Conventions Act 1957

1 Part II

Repeal the Part.

Schedule 4—Amendment of the Migration Act 1958

1 After subparagraph 145(a)(ia)

Insert:

(ib) the *International Criminal Court Act 2002*; or

2 After subparagraph 147(b)(ia)

Insert:

(ib) the *International Criminal Court Act 2002*; or

Schedule 5—Amendment of the Mutual Assistance in Criminal Matters Act 1987

1 Subsection 37A(1)

After "foreign country", insert "or the International Criminal Court".

2 Subsection 37A(2)

Insert:

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

Schedule 6—Amendment of the Telecommunications (Interception) Act 1979

1 After paragraph 5B(h)

Insert:

(haa) a proceeding under Division 5 of Part 4 of the *International Criminal Court Act 2002*; or

(hab) a proceeding before the International Criminal Court sitting in Australia under Part 5 of the *International Criminal Court Act 2002*; or

Schedule 7—Amendment of the Witness Protection Act 1994

1 Section 3 (paragraph (d) of the definition of Commonwealth participant)

After "10", insert "or 10A".

2 After section 10

Insert:

10A Inclusion of persons in NWPP at the request of International Criminal Court

(1) If:

(a) the Minister receives a request from the International Criminal Court for the inclusion of a person (the ***nominated person***) in the NWPP; and

(b) the Minister is satisfied that:

(i) the Court has provided all material that is necessary to support the request; and

(ii) it is appropriate to do so in all the circumstances;

the Minister is to refer the request to the Commissioner.

(2) The Commissioner is to consider including the nominated person in the NWPP in the same way as the Commissioner would consider including another person in the NWPP.

(3) The Commissioner may, if he or she thinks it appropriate to do so, seek further information about the nominated person from the Court.

(4) If:

(a) the Commissioner decides that the nominated person is suitable for inclusion in the NWPP; and

(b) the Minister, after considering a report from the Commissioner recommending the inclusion of the person in the NWPP, has decided that it is appropriate in all the circumstances that the person be included in the NWPP; and

(c) the Commissioner has entered into an arrangement with the Court for the purpose of making services under the NWPP available to the Court; and

(d) if the person is not an Australian citizen—the nominated person has been granted a visa for entry to Australia;

the Commissioner is to include the nominated person in the NWPP.

(5) An arrangement referred to in paragraph (4)(c) must include procedures under which the Court pays the costs associated with providing protection for the nominated person and any associated persons, including:

(a) the costs of travel by those persons and the costs of associated travel by members; and

(b) any costs that will be incurred if protection and assistance under the NWPP to the nominated person is terminated; and

(c) such other costs as the Commissioner determines.

(6) In this section:

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

3 Paragraph 18(6)(b)

After "10", insert "or 10A".

[*Minister's second reading speech made in—*
House of Representatives on 25 June 2002
Senate on 26 June 2002]

(156/02)