International Criminal Court Act 2002

No. 41, 2002

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

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

Contents

Part 1—Preliminary 2

1 Short title ... 2
2 Commencement ... 2
3 Principal object of Act ... 3
4 Definitions ... 4
5 Act to bind Crown ... 12
6 External Territories ... 12

Part 2—General provisions relating to requests by the ICC for cooperation 13

7 What constitutes a request for cooperation ... 13
8 How requests for cooperation are to be made ... 14
9 Urgent requests for cooperation and requests for provisional arrest ... 14
10 Execution of requests ... 15
11 Consultations with ICC ... 15
12 Request that may raise problems relating to Australia's international obligations to a foreign country ... 16
13 Confidentiality of request ... 16
14 Response to be sent to ICC ... 17
15 Attorney-General must take into account ICC's ability to refer matter to Assembly of States Parties or Security Council ... 17

Part 3—Requests by the ICC for arrest and surrender of persons 18

Division 1—Preliminary 18

16 Application of Part ... 18

Division 2—Documentation to accompany request 19

17 Documentation for request for arrest and surrender of person for whom warrant of arrest has been issued ... 19
18 Documentation for request for arrest and surrender of person already convicted ... 19
19 Documentation for request for provisional arrest ... 20

Division 3—Arrest of persons 21

20 Arrest following request for arrest and surrender ... 21
21 Arrest following request for provisional arrest ... 21
22 Certificate by Attorney-General ... 22
23 Remand ... 22

24 Procedure following application for bail 23
25 Release from remand on the Attorney-General's direction 24
26 Release from remand after certain periods 24
27 Application for search warrants 25

Division 4—Surrender of persons 27

28 Surrender warrants 27
29 Certificate by Attorney-General 27
30 Surrender warrant may take effect at later date 27
31 Refusal of surrender 28
32 Postponement of execution of request for surrender 28
33 Previous proceedings against person sought 29
34 Ongoing Australian investigation or prosecution involving different conduct 30
35 Person being investigated or prosecuted in Australia for same conduct 30
36 Challenges to admissibility in other cases 31
37 Request from ICC and a foreign country relating to same conduct 31
38 Procedure where competing request relating to same conduct from a foreign country that is a party to the Statute 32
39 Procedure where competing request relating to same conduct from a foreign country that is not a party to the Statute 32
40 Request from ICC and foreign country relating to different conduct 34
41 Notification of decision on extradition to foreign country 34
42 Detention following surrender warrants 34
43 Content of surrender warrants 35
44 Execution of surrender warrants 35
45 Release from remand 35
46 Effect of surrender to ICC on person's terms of imprisonment 36
47 Expiry of Australian sentences while under ICC detention 37
48 Waiver of rule of speciality 37

Part 4—Other requests by ICC 38

Division 1—Preliminary 38

49 Application of Part 38

Division 2—Documentation to accompany request 39

50 Documentation for request 39

Division 3—Restrictions on provision of assistance 40

51 Refusal of assistance 40

52 Postponement of execution of request 40
53 Procedure if assistance precluded under Australian law 41
54 Postponement where ongoing Australian investigation or prosecution would be interfered with 41
55 Postponement where admissibility challenge 42
56 Competing requests 42
57 Request from ICC and a foreign country relating to same conduct 43
58 Procedure where competing request relating to same conduct from a foreign country that is a party to the Statute 43
59 Procedure where competing request relating to same conduct from a foreign country that is not a party to the Statute 44
60 Request from ICC and foreign country relating to different conduct 45
61 Notification to ICC of decision refusing request by foreign country 45
62 Requests involving competing international obligations 46

Division 4—Identifying or locating persons or things 47

63 Assistance in identifying or locating persons or things 47

Division 5—Taking evidence or producing documents or articles 48

64 Attorney-General may authorise taking of evidence or the production of documents or articles 48
65 Taking of evidence 48
66 Producing documents or other articles 49
67 Legal representation 49
68 Form of certificates 50
69 Compellability of persons to attend etc. 50

Division 6—Questioning of person being investigated or prosecuted 52

70 Assistance in questioning persons 52
71 Procedure where person questioned 53

Division 7—Service of documents 54

72 Assistance in arranging service of documents 54

Division 8—Facilitating the voluntary appearance of persons (other than prisoners) as witnesses or experts before the ICC 56

73 Persons (other than prisoners) assisting investigation or giving evidence 56

Division 9—Temporary transfer of prisoners to the ICC 57

74 Prisoners assisting investigation or giving evidence 57

75 Effect of removal to foreign country on prisoners' terms of imprisonment 59

Division 10—Examination of places or sites 60

76 Assistance in examining places or sites 60

Division 11—Search and seizure 61

77 Attorney-General may authorise applications for search warrants 61

78 Applications for search warrants 61

Division 12—Provision of records or documents 63

79 Facilitating the provision of records or documents 63

Division 13—Protecting victims and witnesses and preserving evidence 64

80 Protecting victims and witnesses and preserving evidence 64

Division 14—Identification, tracing, and freezing or seizure, of proceeds of crimes within the jurisdiction of the ICC 65

Subdivision A—Preliminary 65

81 Application of Division 65

Subdivision B—Restraining orders 65

82 Applying for and making restraining orders 65

83 Excluding property from restraining orders 66

84 When restraining order ceases to be in force 67

Subdivision C—Production orders relating to crimes within the jurisdiction of the ICC 68

85 Requests for production orders 68

86 Applying for and making production orders 68

87 Retaining produced documents 69

Subdivision D—Notices to financial institutions 69

88 Giving notices to financial institutions 69

89 Contents of notices to financial institutions 70

90 Protection from suits etc. for those complying with notices 71

91 Making false statements in applications 71

92 Disclosing existence or nature of notice 71

93 Failing to comply with a notice 72

Subdivision E—Monitoring orders relating to crimes within the jurisdiction of the ICC 72

94 Requests for monitoring orders 72

95 Applying for and making monitoring orders 73

96 Passing on information given under monitoring orders 73

Subdivision F—Search warrants relating to proceeds of crime and property-tracking documents 73

97 Requests for search warrants 73
98 Applying for and issuing search warrants 74
99 Seizure of other property and documents 75
100 Return of seized property to third parties 75
101 Dealing with seized property (other than property-tracking documents) 76
102 Dealing with seized property-tracking documents 78

Division 15—Other types of assistance 79

103 Other types of assistance 79

Division 16—Miscellaneous 80

104 Effect of authorisation to execute request 80
105 Request may relate to assistance sought by defence 80
106 Prosecutor may execute request 80

Part 5—Investigations or sittings of the ICC in Australia 81

107 Prosecutor may conduct investigations in Australia 81
108 ICC sittings in Australia 81
109 ICC's powers while sitting in Australia 81
110 ICC may require witnesses at sittings in Australia to give undertakings as to truthfulness of their evidence 81

Part 6—Search, seizure and powers of arrest 82

Division 1—Search warrants 82

111 When search warrants can be issued 82
112 Content of warrants 83
113 The things authorised by a search warrant in relation to premises 85
114 The things authorised by a search warrant in relation to a person 86
115 Restrictions on personal searches 87
116 Warrants may be issued by telephone etc. 87
117 Formalities relating to warrants issued by telephone etc. 88

Division 2—Provisions relating to execution of search warrants 89

118 Availability of assistance and use of force in executing a warrant 89
119 Copy of warrant to be shown to occupier etc. 89
120 Specific powers available to officers executing warrants 90
121 Use of equipment to examine or process things 90

122 Use of electronic equipment at premises 91
123 Compensation for damage to electronic equipment 93
124 Copies of seized things to be provided 94
125 Occupier entitled to be present during search 94
126 Receipts for things seized under warrant 95

Division 3—Stopping and searching conveyances 96

127 Searches without warrant in emergency situations 96
128 How a police officer exercises a power to search without warrant 96

Division 4—Arrest and related matters 98

129 Power to enter premises to arrest person 98
130 Use of force in making arrest 98
131 Persons to be informed of grounds of arrest 99
132 Power to conduct a frisk search of an arrested person 100
133 Power to conduct an ordinary search of an arrested person 100
134 Power to conduct search of arrested person's premises 100
135 Power to conduct an ordinary search or strip search 100
136 Rules for conduct of strip search 102

Division 5—General 104

137 Conduct of ordinary searches and frisk searches 104
138 Announcement before entry 104
139 Offences relating to telephone warrants 104
140 Retention of things seized 105
141 Magistrate may permit a thing to be retained 106

Part 7—Information provided in confidence by third party 107

142 Disclosure of information provided in confidence by third party 107
143 Request for Australia's consent to disclosure 107

Part 8—Protection of Australia's national security interests 109

144 How national security issues are to be dealt with 109
145 Request for cooperation involving national security 109
146 Request to disclose information or documents involving national security 109
147 Other situations involving national security 110
148 Consultation with ICC required 110
149 Procedure where no resolution 110

Part 9—Transportation of persons in custody through Australia 112
150 Transportation of persons in custody through Australia 112
Part 10—Enforcement in Australia of reparation orders made and fines imposed by ICC 114
151 Assistance with enforcement of orders for reparation to victims 114
152 Assistance with enforcement of orders imposing fines 114
153 Registration of order 115
154 Effect of order 115
Part 11—Forfeiture of proceeds of international crimes 116
155 Requests for enforcement of forfeiture orders 116
156 Registration of order 116
157 Effect of order 117
158 Effect on third parties of registration of forfeiture order 118
159 Forfeiture may be treated as pecuniary penalty order 120
Part 12—Enforcement in Australia of sentences imposed by ICC 121
Division 1—Preliminary 121
160 Australia may agree to act as State of enforcement 121
161 Withdrawal of agreement to act as State of enforcement 122
162 Designation of Australia as place for service of sentence 122
163 Governmental consent to acceptance of designation 122
164 Acceptance of designation 123
Division 2—Transfer to Australia of ICC prisoners 125
165 Issue of warrant for transfer to Australia 125
166 Warrants for transfer to Australia 125
167 Cancellation of warrant 126
Division 3—Enforcement of sentences 128
168 Sentence enforcement in Australia 128
169 Duration and nature of enforced sentence 128
170 Directions about enforcement of sentence 128
171 No appeal or review of sentence of imprisonment imposed by ICC or of sentence enforcement decisions of Attorney-General 129
172 ICC prisoner transferred to Australia to be regarded as a federal prisoner 129
173 Other matters relating to ICC prisoners 131

174 Pardon, amnesty or commutation of sentences of imprisonment imposed on ICC prisoners transferred to Australia 131
175 ICC prisoner may apply to be transferred from Australia to a foreign country 132
176 How ICC prisoner is to be transferred 132
177 Special rules in certain cases 132
178 Extradition of escaped ICC prisoner 133

Part 13—Requests by Australia to ICC 135

179 Application of Part 135
180 Request by Attorney-General 135

Part 14—Miscellaneous 136

181 Attorney-General's decisions in relation to certificates to be final 136
182 Arrest of persons escaping from custody or contravening conditions of recognisances 137
183 Aiding persons to escape etc. 137
184 Cost of execution of requests 137
185 Legal assistance 138
186 Arrangements with States 138
187 Delegation 139
188 Regulations 139
189 Annual report 139

Schedule 1—Rome Statute of the International Criminal Court 140



International Criminal Court Act 2002

No. 41, 2002

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

[*Assented to 27 June 2002*]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *International Criminal Court 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. Part 1 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent	28 June 2002
2. Parts 2 to 14	A single day to be fixed by Proclamation, subject to subsections (3) to (6)	26 September 2002 (*Gazette* 2002, No. GN38)

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
3. Schedule 1	The day after this Act receives the Royal Assent	28 June 2002

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) A Proclamation under item 2 of the table must not specify a day that occurs before the day on which the Statute enters into force for Australia.

(4) Subject to subsection (5), if a provision covered by item 2 of the table does not commence within the period of one month beginning on the day on which the Statute enters into force for Australia, it commences on the first day after the end of that period.

(5) If a provision commences as a result of subsection (4), the Minister must announce by notice in the *Gazette* the day on which the provision commenced.

(6) If sections 3 to 338 of the *Proceeds of Crime Act 2002* have not commenced before the day fixed under column 2 of item 2 of the table, Division 14 of Part 4, and Part 11, commence immediately after the commencement of those sections.

3 Principal object of Act

(1) The principal object of this Act is to facilitate compliance with Australia's obligations under the Statute.

(2) Accordingly, this Act does not affect the primacy of Australia's right to exercise its jurisdiction with respect to crimes within the jurisdiction of the ICC.

Note: The crimes within the jurisdiction of the ICC are set out as crimes in Australia in Division 268 of the *Criminal Code*.

4 Definitions

In this Act, unless the contrary intention appears:

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

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

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

(a) an officer of the Commonwealth; or

(b) a police officer;

authorised by the Attorney-General to act in connection with the provision of the assistance.

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

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

(a) the Attorney-General; and

(b) the Minister administering the *Migration Act 1958*; and

(c) the State Minister of the State in which the prisoner is to begin to serve the sentence.

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

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

authenticated by the ICC means authenticated by the ICC under the Statute or the Rules.

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

conduct means:

(a) an act; or

(b) an omission to perform an act.

crime within the jurisdiction of the ICC means:

(a) an international crime; or

(b) an offence against the administration of the ICC's justice.

DPP means the Director of Public Prosecutions.

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

enforcement conditions has the meaning given by subsection 160(1).

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

evidence includes expert evidence.

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

examination of a site that is a grave includes exhumation of the grave.

executing officer, in relation to a warrant, means:

(a) the police officer named in the warrant, by the magistrate who issued the warrant, as being responsible for executing the warrant; or

(b) if that police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the police officer so named; or

(c) another police officer whose name has been written in the warrant by the police officer last named in the warrant.

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

Federal Court means the Federal Court of Australia.

federal prisoner means a person who:

(a) is being held in custody pending:

(i) trial for; or

(ii) a committal hearing or a summary hearing in relation to; or

(iii) sentencing for;

an offence against a law of the Commonwealth or of a Territory; or

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

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

financial institution has the same meaning in Division 14 of Part 4, and in Part 11, as that expression has in the Proceeds of Crime Act.

forfeiture order means an order made by the ICC under paragraph 2(b) of article 77 of the Statute for the forfeiture of proceeds of a crime within the jurisdiction of the ICC.

frisk search means:

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

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

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

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

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

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

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

monitoring order has the same meaning as in the Proceeds of Crime Act.

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

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

officer assisting, in relation to a warrant, means:

(a) a person who is a police officer and who is assisting in executing the warrant; or

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

Official Trustee means the Official Trustee in Bankruptcy.

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

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and

(b) an examination of those items.

police officer means:

(a) a member or special member (within the meaning of the *Australian Federal Police Act 1979*) of the Australian Federal Police; or

(b) a member of the police force of a State or Territory.

police station includes:

(a) a police station of a State or Territory; and

(b) a building occupied by the Australian Federal Police.

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

premises includes a place and a conveyance.

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

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

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

proceeds of a crime within the jurisdiction of the ICC means proceeds (within the meaning of the Proceeds of Crime Act) of such a crime.

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

Proceeds of Crime Act means the *Proceeds of Crime Act 2002*.

production order has the same meaning as in the Proceeds of Crime Act.

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

property tracking document means:

(a) a document that is relevant to identifying, locating or quantifying property of a person who has been convicted of or charged with, or whom it is proposed to charge with, a crime within the jurisdiction of the ICC; or

(b) a document that is relevant to identifying or locating any document necessary for the transfer of the property of such a person; or

(c) a document that is relevant to identifying, locating or quantifying the proceeds of a crime within the jurisdiction of the ICC; or

(d) a document that is relevant to identifying or locating any document necessary for the transfer of such proceeds; or

(e) a document that would assist in the reading or interpretation of a document referred to in any of the above paragraphs.

Prosecutor means the Prosecutor of the ICC.

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

related crime within the jurisdiction of the ICC: a crime within the jurisdiction of the ICC is related to another crime within the jurisdiction of the ICC if the physical elements of the 2 crimes are substantially the same acts or omissions.

request for arrest and surrender of a person means a request made to Australia by the ICC for the arrest and surrender of the person and, if a request has previously been made by the ICC for the provisional arrest of the person, includes a subsequent request made by the ICC for the surrender of the person.

request for cooperation has the meaning given by section 7.

request for provisional arrest of a person means a request made to Australia by the ICC for the provisional arrest of the person.

request for surrender of a person means a request made by the ICC for the surrender of the person, whether in conjunction with a

request made by the ICC for the arrest of the person or subsequent to a request made by the ICC for the provisional arrest of the person.

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

Rules means the Rules of Procedure and Evidence in force under article 51 of the Statute.

search warrant (except in Part 4) means a warrant issued under section 111.

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

serve a sentence imposed by the ICC includes complete the service of such a sentence that has been partly served.

State includes the Australian Capital Territory, the Northern Territory and Norfolk Island.

State Minister means:

(a) in relation to a particular State other than the Australian Capital Territory, the Northern Territory or Norfolk Island—the Minister of the State administering the law of the State relating to the transfer of prisoners; and

(b) in relation to the Australian Capital Territory—the Minister for the Australian Capital Territory administering the law of the Australian Capital Territory relating to the transfer of prisoners; and

(c) in relation to the Northern Territory—the Minister for the Northern Territory administering the law of the Northern Territory relating to the transfer of prisoners; and

(d) in relation to Norfolk Island—the executive member (within the meaning of the *Norfolk Island Act 1979*) administering the law of Norfolk Island relating to the transfer of prisoners;

and includes any Minister or executive member acting for the time being for or on behalf of the Minister or executive member referred

to in any of the above paragraphs and any person to whom the Minister or executive member so referred to has delegated any of the Minister's or executive member's functions under this Act.

State prisoner means a person who:

(a) is being held in custody pending:

(i) trial for; or

(ii) a committal hearing or a summary hearing in relation to; or

(iii) sentencing for;

an offence against a law of a State; or

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

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

Statute 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.

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

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

(a) requiring the person to remove all of his or her garments; and

(b) an examination of the person's body (but not of the person's body cavities) and of those garments.

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

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

surrender warrant means a warrant issued under section 28.

Territory does not include the Australian Capital Territory or the Northern Territory and, except in section 6, does not include Norfolk Island.

Trial Chamber means the Trial Chamber of the ICC.

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

5 Act to bind Crown

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

6 External Territories

This Act extends to each external Territory.

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

7 What constitutes a request for cooperation

(1) A ***request for cooperation*** is a request made by the ICC to Australia, in respect of an investigation or prosecution that the Prosecutor is conducting or proposing to conduct, for:

(a) assistance in connection with any one or more of the following:

(i) the arrest (including the provisional arrest), and surrender to the ICC, of a person in relation to whom the ICC has issued a warrant of arrest or a judgment of conviction;

(ii) the identification and whereabouts of a person or the location of items;

(iii) the taking of evidence, including testimony on oath, and the production of evidence, including expert opinions and reports necessary to the ICC;

(iv) the questioning of any person being investigated or prosecuted;

(v) the service of documents, including judicial documents;

(vi) facilitating the voluntary appearance of persons (other than prisoners) before the ICC;

(vii) the temporary transfer of prisoners to the ICC;

(viii) the examination of places or sites;

(ix) the execution of searches and seizures;

(x) the provision of records and documents, including official records and documents;

(xi) the protection of victims or witnesses or the preservation of evidence;

(xii) the identification, tracing, and freezing or seizure, of the proceeds of crimes within the jurisdiction of the ICC for

the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and

(b) any other type of assistance that is not prohibited by Australian law, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the ICC and the enforcement of orders of the ICC made after convictions for such crimes.

(2) This Act does not prevent the provision of assistance to the ICC otherwise than under this Act, including assistance of an informal nature.

8 How requests for cooperation are to be made

(1) Subject to section 9, a request for cooperation is to be made in writing:

(a) to the Attorney-General through the diplomatic channel; or

(b) through the International Criminal Police Organisation or any other appropriate regional organisation.

(2) If a request for cooperation is sent to, or received by, a person to whom the Attorney-General has delegated a power to deal with the request, the request is taken for the purposes of this Act to have been sent to, or received by, the Attorney-General.

9 Urgent requests for cooperation and requests for provisional arrest

(1) A request for cooperation made in urgent cases, and any request for provisional arrest, may be made by using any medium capable of delivering a written record.

(2) If a request is made or sent in the first instance in a manner specified in subsection (1), it must be followed as soon as practicable by a formal request made in accordance with section 8.

10 Execution of requests

(1) A request for cooperation must be executed in accordance with the relevant procedure under the applicable Australian law (as provided in this Act).

(2) If the request states that it should be executed in a particular manner that is not prohibited by Australian law or by using a particular procedure that is not prohibited by Australian law, the Attorney-General must use his or her best efforts to ensure that the request is executed in that manner or by using that procedure, as the case may be.

(3) This section does not affect the operation of subsection 106(1) (which allows the Prosecutor in certain circumstances to execute a request for cooperation to which Part 4 applies) or section 107 (which allows the Prosecutor in certain circumstances to conduct investigations in Australia).

11 Consultations with ICC

(1) The Attorney-General must consult with the ICC, without delay, if, for any reason, there are or may be problems with the execution of a request for cooperation.

(2) Before refusing a request for assistance of a kind mentioned in paragraph 1(l) of article 93 of the Statute, the Attorney-General must consult with the ICC to ascertain whether the assistance requested could be provided:

(a) subject to conditions; or

(b) at a later date or in an alternative manner.

(3) Without limiting the types of conditions under which assistance may be provided, the Attorney-General may agree to information or documents being sent to the Prosecutor on a confidential basis, on the condition that the Prosecutor will use them solely for the purpose of generating new evidence.

(4) If the Attorney-General sends information or documents subject to the condition specified in subsection (3), the Attorney-General may

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

12 Request that may raise problems relating to Australia's international obligations to a foreign country

(1) This section applies where the Attorney-General consults with the ICC because the execution of a request for cooperation may raise problems relating to Australia's obligations to a foreign country under international law or international agreements as mentioned in article 98 of the Statute.

(2) If, after the consultation, the Attorney-General is satisfied that the execution of the request would not conflict with any of those obligations, the Attorney-General must sign a certificate stating that the execution of the request does not conflict with any of those obligations.

(3) A certificate signed under subsection (2) is conclusive evidence of the matters stated in the certificate.

(4) If, after the consultation, the Attorney-General is not satisfied as mentioned in subsection (2), the Attorney-General must postpone the execution of the request unless and until the foreign country has made the necessary waiver or given the necessary consent.

13 Confidentiality of request

(1) A person dealing with a request for cooperation must keep the request, and any documents supporting it, confidential except to the extent that it is necessary to disclose the request or such a document for the purpose of executing the request.

(2) If the ICC requests that particular information made available in connection with a request for cooperation be provided and handled in a manner that protects the safety, or physical or psychological well-being, of any victims, potential witnesses and their families, a person dealing with the request must ensure that the information is provided and handled in that manner.

14 Response to be sent to ICC

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

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

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

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

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

15 Attorney-General must take into account ICC's ability to refer matter to Assembly of States Parties or Security Council

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

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

Division 1—Preliminary

16 Application of Part

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

Division 2—Documentation to accompany request

17 Documentation for request for arrest and surrender of person for whom warrant of arrest has been issued

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

(a) information describing the person sought, being information sufficient to identify the person; and

(b) information as to the person's probable location; and

(c) a copy of the warrant of arrest, authenticated by the ICC; and

(d) any other documents, statements or information required by or under the regulations.

18 Documentation for request for arrest and surrender of person already convicted

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

(a) a copy of any warrant of arrest for the person, authenticated by the ICC; and

(b) a copy of the judgment of conviction, authenticated by the ICC; and

(c) information to demonstrate that the person sought is the person referred to in the judgment of conviction; and

(d) if the person sought has been sentenced:

(i) a copy of the sentence imposed, authenticated by the ICC; and

(ii) in the case of a sentence of imprisonment—a statement of any period already served and the period remaining to be served.

19 Documentation for request for provisional arrest

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

(a) information describing the person sought, being information sufficient to identify the person; and

(b) information as to the person's probable location; and

(c) a concise statement of:

(i) the crimes within the jurisdiction of the ICC for which the person's arrest is requested; and

(ii) the facts that are alleged to constitute those crimes, including, where possible, the dates when, and the locations at which, the crimes are alleged to have been committed; and

(d) a statement of the existence of a warrant of arrest, or of a judgment of conviction, against the person sought; and

(e) a statement that a request for surrender of the person will follow.

Division 3—Arrest of persons

20 Arrest following request for arrest and surrender

(1) Subject to section 22, if:

(a) the Attorney-General receives a request for arrest and surrender of a person; and

(b) Division 2 has been complied with in respect of the request;

the Attorney-General may, by written notice in the statutory form expressed to be directed to any magistrate, state that the request has been received.

(2) If the Attorney-General issues such a notice, a copy of any warrant of arrest or judgment of conviction that was issued by the ICC must be attached to the notice.

(3) A magistrate must issue a warrant, by writing in the statutory form, for the person's arrest if an application is made, in the statutory form, on behalf of the ICC, for issue of a warrant pursuant to the notice.

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

21 Arrest following request for provisional arrest

(1) Subject to section 22, if:

(a) the Attorney-General receives a request for provisional arrest of a person; and

(b) Division 2 has been complied with in respect of the request;

the Attorney-General may, by written notice in the statutory form expressed to be directed to any magistrate, state that the request has been received.

(2) If the Attorney-General issues such a notice, a magistrate must issue a warrant, by writing in the statutory form, for the person's

arrest if an application is made, in the statutory form, on behalf of the ICC, for issue of a warrant pursuant to the notice.

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

22 Certificate by Attorney-General

The Attorney-General must not issue a notice under section 20 or 21 after receipt of a request for the arrest and surrender, or for the provisional arrest, of a person for a crime unless the Attorney-General has, in his or her absolute discretion, signed a certificate that it is appropriate to do so.

23 Remand

(1) If a person is arrested under a warrant issued under section 20 or 21, the person executing the warrant must, as soon as practicable after the arrest:

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

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

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

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

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

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

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

(c) section 131 has been complied with in respect of the arrest.

(3) If the magistrate is not satisfied as to any one or more of the matters mentioned in subsection (2), the magistrate must order the release of the person from custody. However, the making of the order does not prevent the person from being arrested under a further warrant issued under section 20 or 21.

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

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

(6) Without limiting the other matters that may be taken into account in making a decision to grant bail, the magistrate must have regard to the following:

(a) the gravity of the alleged crimes within the jurisdiction of the ICC;

(b) whether there are urgent and exceptional circumstances that favour the grant of bail;

(c) whether necessary safeguards exist to ensure that Australia can fulfil its duty under the Statute to surrender the person.

(7) Without limiting the other matters that may be taken into account in making a decision to grant bail, the magistrate may not consider whether any warrant of arrest issued by the ICC was properly issued in accordance with the Statute.

24 Procedure following application for bail

(1) If an application for bail is made, the Attorney-General must notify the ICC.

(2) The Attorney-General must give to the magistrate who is considering the application the recommendations made by the ICC in relation to the application.

(3) Before giving a decision, the magistrate must consider the recommendations that the ICC has made, including any recommendations or measures to prevent the escape of the person.

(4) If the person is granted bail, the Attorney-General must, if the ICC requests, provide periodic reports to the ICC on the person's bail status.

(5) This section applies with any necessary modifications to any application for bail made during the period until the person is surrendered or is released according to law.

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

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

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

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

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

26 Release from remand after certain periods

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

(a) the person was arrested under a warrant issued under subsection 21(2); and

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

(c) a notice has not been given under subsection 20(1) in relation to the person.

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

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

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

as the case requires.

(3) If a magistrate was satisfied under subsection (2) that such a notice was likely to be given in relation to the person within a particular period but the notice is not given within the period:

(a) the person must be brought before a magistrate; and

(b) the magistrate must:

(i) order the release of the person from custody; or

(ii) order the discharge of the recognisances on which bail was granted to the person;

as the case requires.

27 Application for search warrants

(1) If:

(a) a person is arrested under a warrant issued under section 20 or 21; and

(b) a police officer has reasonable grounds for suspecting that evidential material relating to a crime within the jurisdiction of the ICC in respect of which the warrant was issued is, or within the applicable period referred to in subsection (3) of this section will be, at any premises;

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

(2) If:

(a) a person is arrested under a warrant issued under section 20 or 21; and

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

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

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

(a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 116—48 hours; or

(b) otherwise—72 hours.

Note: Part 6 deals with search warrants.

Division 4—Surrender of persons

28 Surrender warrants

(1) Except where this Division otherwise provides, if a person is remanded under Division 3, the Attorney-General may, subject to section 29, issue a warrant for the surrender of the person.

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

29 Certificate by Attorney-General

The Attorney-General must not issue a warrant for the surrender of a person for a crime unless the Attorney-General has, in his or her absolute discretion, signed a certificate that it is appropriate to do so.

30 Surrender warrant may take effect at later date

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

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

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

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

31 Refusal of surrender

(1) The Attorney-General must refuse a request for surrender of a person if the ICC determines that the case is inadmissible and subsection 33(4), 35(3) or 36(3) applies.

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

(a) there are competing requests from the ICC, and from a foreign country that is not a party to the Statute, relating to the same conduct, and subsection 39(6) applies; or

(b) there are competing requests from the ICC, and from a foreign country that is not a party to the Statute, relating to different conduct, and subsection 40(3) applies.

(3) The restrictions on extradition specified in the *Extradition Act 1988* do not apply in relation to a request for surrender of a person.

32 Postponement of execution of request for surrender

(1) The Attorney-General may postpone the execution of a request for surrender of a person for a crime within the jurisdiction of the ICC at any time before the person is surrendered if, and only if:

(a) a determination on admissibility of the kind specified in section 33, 35 or 36 is pending before the ICC; or

(b) the request would interfere with an ongoing investigation or prosecution in Australia involving different conduct from the conduct that constituted the crime, as provided in section 34; or

(c) the request involves a conflict with Australia's international obligations, and subsection 12(4) applies.

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

(3) A decision by the Attorney-General to postpone the execution of a request:

(a) does not limit or affect the detention of a person under a warrant issued under this Part; and

(b) does not affect the validity of any act done or any warrant issued under this Part before the decision was made.

(4) However, if:

(a) the person applies to an appropriate court to be released; and

(b) the court is satisfied that reasonable notice of the intention to make the application has been given to the Attorney-General;

the court may, unless the person is liable to be detained under any other order or other sufficient cause is shown against the release, order the release of the person from the place where the person is detained.

33 Previous proceedings against person sought

(1) This section applies if the person whose surrender is sought alleges to the Attorney-General that:

(a) the case is one to which paragraph 1 of article 20 of the Statute applies (because it relates to conduct that formed the basis of crimes for which the person has been convicted or acquitted by the ICC); or

(b) the person has been tried by another court for conduct also proscribed under article 6, 7 or 8 of the Statute and the case is not one to which paragraph 3(a) or (b) of article 20 of the Statute applies.

(2) The Attorney-General must immediately consult with the ICC to determine if there has been a relevant determination on admissibility under the Statute.

(3) If the ICC has determined that the case is admissible, surrender cannot be refused on the ground of the person's previous conviction, acquittal or trial in respect of the relevant conduct.

(4) If the ICC has determined that the case is inadmissible under article 20 of the Statute, surrender must be refused on the ground of the person's previous conviction, acquittal or trial, as the case may be, in respect of the relevant conduct.

(5) If an admissibility determination is pending, the Attorney-General may postpone the execution of a request until the ICC has made its determination.

34 Ongoing Australian investigation or prosecution involving different conduct

(1) This section applies if a request for surrender of a person is made that would interfere with an ongoing investigation or prosecution in Australia involving different conduct from the conduct constituting the crime within the jurisdiction of the ICC to which the request relates.

(2) The Attorney-General may, after consultation with the ICC:
   (a) proceed with the execution of the request despite the Australian investigation or prosecution; or
   (b) postpone the execution of the request until the Australian investigation or prosecution has been finally disposed of.

(3) Nothing in this section limits or affects section 30 (which allows the Attorney-General to issue a surrender warrant that comes into effect at a later date if a person is serving a sentence for a different offence against Australian law).

35 Person being investigated or prosecuted in Australia for same conduct

(1) This section applies if:
   (a) a request for surrender of a person is made; and
   (b) the request relates to conduct that would constitute an offence under Australian law; and
   (c) either:
      (i) the conduct is being investigated or prosecuted in Australia; or
      (ii) the conduct has been investigated in Australia, and a decision was made not to prosecute the person sought; and

(d) a challenge to the admissibility of the case is being or has been made to the ICC under paragraph 2(b) of article 19 of the Statute.

(2) The Attorney-General may postpone the execution of the request for surrender until the ICC has made its determination on admissibility.

(3) If the ICC determines that the case is inadmissible, surrender must be refused.

(4) If the ICC determines that the case is admissible and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

36 Challenges to admissibility in other cases

(1) This section applies if the ICC is considering an admissibility challenge under article 18 or 19 of the Statute, other than a challenge of the kind referred to in section 33 or 35.

(2) The Attorney-General may, pending a determination by the ICC on the admissibility challenge, postpone the execution of a request under this Part in respect of the crime within the jurisdiction of the ICC to which the challenge relates.

(3) If the ICC determines that the case to which the request relates is inadmissible, surrender must be refused.

(4) If the ICC determines that the case to which the request relates is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

37 Request from ICC and a foreign country relating to same conduct

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

(a) must notify the ICC and the foreign country of that fact; and
(b) must determine, in accordance with section 38 or 39, whether the person is to be surrendered or is to be extradited to the foreign country.

38 Procedure where competing request relating to same conduct from a foreign country that is a party to the Statute

(1) This section applies if:
(a) section 37 applies; and
(b) the foreign country is a party to the Statute.

(2) Priority must be given to the request from the ICC if:
(a) the ICC has, under article 18 or 19 of the Statute, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the foreign country in respect of its request for extradition; or
(b) the ICC makes such a determination after receiving notification of the request for extradition from the foreign country.

(3) If the ICC has not made a determination referred to in subsection (2), then, pending the making of such a determination:
(a) the steps required to be taken under the *Extradition Act 1988* in relation to a request for extradition may continue to be taken; but
(b) no person may be extradited under that Act pursuant to the request unless and until the ICC makes its determination on admissibility and determines that the case is inadmissible.

(4) Paragraph (3)(b) does not apply if the ICC does not make its determination on an expedited basis.

39 Procedure where competing request relating to same conduct from a foreign country that is not a party to the Statute

(1) This section applies if:
(a) section 37 applies; and

(b) the foreign country is not a party to the Statute.

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

(a) Australia is not under an international obligation to extradite the person to the foreign country; and

(b) the ICC has determined under article 18 or 19 of the Statute that the case is admissible.

(3) The request for extradition by the foreign country may continue to be dealt with if:

(a) Australia is not under an international obligation to extradite the person to the foreign country; and

(b) the ICC has not yet determined under article 18 or 19 of the Statute that the case is admissible.

(4) Despite subsection (3), no person may be extradited under the *Extradition Act 1988* pursuant to the request for extradition unless and until the ICC makes its determination on admissibility and determines that the case is inadmissible.

(5) Subsection (4) does not apply if the ICC does not make its determination on an expedited basis.

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

(7) In making the determination under subsection (6), the Attorney-General must consider all relevant matters, including, but not limited to:

(a) the respective dates of the requests; and

(b) the interests of the foreign country, including, if relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and

(c) the possibility of subsequent surrender between the ICC and the foreign country.

40 Request from ICC and foreign country relating to different conduct

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

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

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

(4) In making the determination under subsection (3), the Attorney-General must consider all relevant matters, including, but not limited to, the matters specified in subsection 39(7), but must give special consideration to the relative nature and gravity of the conduct for which surrender and extradition are sought.

41 Notification of decision on extradition to foreign country

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

(2) The obligation in this section is in addition to the requirement of section 14 for the Attorney-General to respond formally to the request from the ICC.

42 Detention following surrender warrants

(1) If the Attorney-General issues a surrender warrant in relation to a person who is on bail, the person must be brought as soon as

practicable before a magistrate in the State or Territory in which the person is on remand.

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

43 Content of surrender warrants

(1) A surrender warrant in relation to the person (the ***relevant person***) must:

(a) require the person in whose custody the relevant person is being held to release the relevant person into the custody of a police officer; and

(b) authorise the police officer to transport the relevant person in custody, and, if necessary or convenient, to detain the relevant person in custody, for the purpose of enabling the relevant person:

(i) to be placed in the custody of a specified person who is an officer of the ICC or other person authorised by the ICC; and

(ii) to be transported to a place specified by the ICC; and

(c) authorise the specified person to transport the relevant person in custody to a place specified by the ICC for the purpose of surrendering the relevant person to a person appointed by the ICC to receive the person.

(2) A place referred to in paragraph (1)(b) or (c) may be a place in or outside Australia.

44 Execution of surrender warrants

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

45 Release from remand

(1) If:

(a) a surrender warrant has been issued in relation to a person; and

(b) the person is in custody in Australia under the warrant, or otherwise under this Act, more than 21 days after the day on which the warrant was first liable to be executed; and

(c) the person applies to the Supreme Court of the State or Territory in which the person is in custody; and

(d) reasonable notice of the intention to apply has been given to the Attorney-General;

the Court must, subject to subsection (2), order that the person be released from that custody.

(2) However, if the Court is satisfied that the surrender warrant has not been executed within the period of 21 days, or since the person last made an application under subsection (1), as the case may be:

(a) because to do so would have endangered the person's life, or would have prejudiced the person's health; or

(b) for any other reasonable cause;

the Court must not order that the person be released from custody.

46 Effect of surrender to ICC on person's terms of imprisonment

(1) If, at the time when a person was surrendered in connection with a crime within the jurisdiction of the ICC, the person was serving a sentence of imprisonment in respect of an offence against a law of the Commonwealth or of a Territory, or was otherwise subject to detention under a law of the Commonwealth or of a Territory:

(a) any period spent by the person in custody in connection with the surrender warrant; and

(b) subject to subsection (2), any period spent by the person in custody in connection with detention by, or on the order of, the ICC in respect of the crime;

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

(2) If the person is convicted of the crime within the jurisdiction of the ICC, the period spent by the person in custody serving a sentence of imprisonment imposed by the ICC for the crime is not to be

counted as a period towards the sentence of imprisonment or period of detention referred to in subsection (1).

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

47 Expiry of Australian sentences while under ICC detention

If:

(a) at the time when a person was surrendered, the person was serving a sentence of imprisonment in respect of an offence against an Australian law, or was otherwise subject to detention under an Australian law; and

(b) each such sentence of imprisonment that the person was serving, or each such period of detention to which the person was subject, at that time expires while the person is being detained by, or on the order of, the ICC;

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

48 Waiver of rule of speciality

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

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

Part 4—Other requests by ICC

Division 1—Preliminary

49 Application of Part

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

Division 2—Documentation to accompany request

50 Documentation for request

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

(a) a concise statement of the purpose of the request and the assistance requested, including the legal basis and the grounds for the request; and

(b) as much detailed information as possible about the location or identification of any person or place that must be found or identified in order that the assistance requested can be provided; and

(c) a concise statement of the essential facts underlying the request; and

(d) the reasons for, and details of, any procedure or requirement to be followed; and

(e) any other information required under the regulations to enable the request to be executed; and

(f) any other relevant information that is necessary to enable the assistance to be provided.

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

(a) a description of the person to be transported;

(b) a brief statement of the facts of the case and their legal characterisation; and

(c) a copy of the warrant for arrest and surrender.

Division 3—Restrictions on provision of assistance

51 Refusal of assistance

(1) The Attorney-General must refuse a request for cooperation in circumstances referred to in subsection 142(4) (which relates to third party information that cannot be disclosed).

(2) The Attorney-General may refuse a request for cooperation:
  (a) in circumstances referred to in Part 8 (which relates to the protection of national security interests); or
  (b) if there are competing requests from the ICC, and from a foreign country that is not a party to the Statute, relating to the same conduct, and subsection 59(4) applies; or
  (c) if there are competing requests from the ICC, and from a foreign country, relating to different conduct, and subsection 60(3) applies.

52 Postponement of execution of request

(1) The Attorney-General may postpone the execution of a request for cooperation if, and only if:
  (a) the execution of the request would interfere with an ongoing investigation or prosecution in Australia involving different conduct from the conduct to which the request relates, and section 54 applies; or
  (b) a determination of admissibility is pending before the ICC, and section 55 applies; or
  (c) there are competing requests from the ICC and from a foreign country to which Australia is under an international obligation, and paragraph 56(2)(a) applies; or
  (d) the request is for assistance under paragraph 1(l) of article 93 of the Statute, and subsection 11(2) applies; or
  (e) the request involves a conflict with Australia's international obligations, and subsection 12(4) applies.

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

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

53 Procedure if assistance precluded under Australian law

If:

(a) the execution of a particular measure of assistance specified in a request for cooperation is prohibited in Australia; and

(b) the Attorney-General consults with the ICC in accordance with subsection 11(2) in respect of the request; and

(c) the matter is not resolved but the ICC modifies the request so that it can be dealt with under this Act;

the Attorney-General must deal with the request accordingly.

54 Postponement where ongoing Australian investigation or prosecution would be interfered with

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

(2) Despite subsection 52(3), the period of postponement may be no longer than is reasonably necessary to complete the investigation or prosecution.

(3) Before making a decision to postpone the execution of a request, the Attorney-General must consider whether the assistance could be provided immediately subject to conditions.

(4) If the Attorney-General decides to postpone the execution of a request and the ICC requests assistance in the preservation of evidence under paragraph 1(j) of article 93 of the Statute, the Attorney-General must deal with the request in accordance with this Part.

55 Postponement where admissibility challenge

(1) This section applies if the ICC is considering an admissibility challenge under article 18 or 19 of the Statute in respect of a case to which a request for cooperation relates.

(2) If the ICC has not made an order under article 18 or 19 of the Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may postpone the execution of the request until the ICC has made its determination on admissibility.

(3) If the ICC has made an order under article 18 or 19 of the Statute allowing the Prosecutor to collect evidence to which the request relates, the Attorney-General may not postpone the execution of the request under this section but must deal with it under this Part.

(4) If the ICC determines that the case to which the request relates is inadmissible, the request must be refused.

(5) If the ICC determines that the case to which the request relates is admissible, and there is no other ground for refusing or postponing the request, the request must continue to be dealt with under this Part.

56 Competing requests

(1) If a request for cooperation is made and a foreign country makes a request for assistance to which Australia is under an international obligation to respond, the Attorney-General must, after consultation with the ICC and that country, try to comply with both requests.

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

(a) postpone the execution of either of the requests;
(b) attach conditions to the provision of assistance under either or both of the requests.

(3) If it is not possible to resolve the issue by consultation, the method of dealing with the requests must be resolved in accordance with sections 57 to 61.

57 Request from ICC and a foreign country relating to same conduct

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

(a) must notify the ICC and the foreign country of that fact; and
(b) must determine, in accordance with section 58 or 59, whether the request for cooperation or the request from the foreign country is to be complied with.

58 Procedure where competing request relating to same conduct from a foreign country that is a party to the Statute

(1) This section applies if:
(a) section 57 applies; and
(b) the foreign country is a party to the Statute.

(2) Priority must be given to the request for cooperation if:
(a) the ICC has, under article 18 or 19 of the Statute, made a determination that the case is admissible and that determination takes into account the investigation or prosecution conducted by the foreign country; or
(b) the ICC makes such a determination after receiving notification of the request from the foreign country.

(3) If the ICC has not made a determination referred to in subsection (2), then, pending the making of such a determination:

(a) any preliminary steps required to be taken to give effect to the request from the foreign country may continue to be taken; but

(b) the request may not be complied with unless and until the ICC makes its determination on admissibility and determines that the case is inadmissible.

(4) Paragraph (3)(b) does not apply if the ICC does not make its determination on an expedited basis.

59 Procedure where competing request relating to same conduct from a foreign country that is not a party to the Statute

(1) This section applies if:

(a) section 57 applies; and

(b) the foreign country is not a party to the Statute.

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

(a) Australia is not under an international obligation to comply with the request from the foreign country; and

(b) the ICC has determined under article 18 or 19 of the Statute that the case is admissible.

(3) The request from the foreign country may continue to be dealt with if:

(a) Australia is not under an international obligation to comply with the request; and

(b) the ICC has not yet determined under article 18 or 19 of the Statute that the case is admissible.

(4) If Australia is under an international obligation to comply with the request from the foreign country, the Attorney-General must determine whether the request for cooperation or the request from the foreign country is to be complied with.

(5) In making a determination under subsection (4), the Attorney-General must consider all relevant matters, including, but not limited to:

(a) the respective dates of the requests; and

(b) the interests of the foreign country, including, if relevant, whether the crime to which the request from that country relates was committed in its territory and the nationality of the victims and of the person who is alleged to have engaged in the conduct forming the basis of that crime.

60 Request from ICC and foreign country relating to different conduct

(1) If a request for cooperation is made and a foreign country requests assistance from Australia in respect of a matter relating to conduct other than the conduct that forms the basis of the crime to which the request for cooperation relates, the Attorney-General must determine whether the request for cooperation or the request from the foreign country is to be complied with.

(2) If Australia is not under an international obligation to comply with the request from the foreign country, priority must be given to the request for cooperation.

(3) If Australia is under an international obligation to comply with the request from the foreign country, the Attorney-General must determine whether the request for cooperation or the request from the foreign country is to be complied with.

(4) In making a determination under subsection (3), the Attorney-General must consider all relevant matters, including, but not limited to, the matters specified in subsection 59(5), but must give special consideration to the relative seriousness of the offences to which the requests relate.

61 Notification to ICC of decision refusing request by foreign country

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

(2) The obligation in this section is in addition to the requirement of section 14 for the Attorney-General to respond formally to the request for cooperation.

62 Requests involving competing international obligations

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

Division 4—Identifying or locating persons or things

63 Assistance in identifying or locating persons or things

(1) This section applies if:

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

(b) the Attorney-General is satisfied that:

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

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

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

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

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

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

Division 5—Taking evidence or producing documents or articles

64 Attorney-General may authorise taking of evidence or the production of documents or articles

(1) This section applies if:

(a) the ICC requests that:

(i) evidence be taken in Australia; or

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

(b) the Attorney-General is satisfied that:

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

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

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

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

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

65 Taking of evidence

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

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

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

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

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

(a) cause the evidence to be recorded in writing or in any other form that the magistrate considers to be appropriate in the circumstances; and

(b) certify that the evidence was taken by the magistrate; and

(c) cause the writing, or other record of the evidence, so certified to be sent to the Attorney-General.

66 Producing documents or other articles

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

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

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

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

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

67 Legal representation

(1) The evidence of a witness may be taken under section 65 in the presence or absence of:

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

(b) his or her legal representative (if any).

(2) The magistrate conducting a proceeding under either section 65 or 66, or both, may permit:

(a) if the person to whom the investigation conducted by the Prosecutor, or the proceeding before the ICC, relates has been notified of the proceeding before the magistrate—that person; and

(b) any other person giving evidence or producing documents or other articles at the proceeding before the magistrate; and

(c) a representative of the Prosecutor or of the ICC;

to have legal representation at the proceeding before the magistrate.

68 Form of certificates

A certificate by a magistrate under subsection 65(3) or 66(2) must state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present:

(a) the person to whom the investigation conducted by the Prosecutor, or the proceeding before the ICC, relates, or his or her legal representative (if any);

(b) any other person giving evidence or producing documents or other articles, or his or her legal representative (if any).

69 Compellability of persons to attend etc.

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

(a) to attend before a magistrate; and

(b) to give evidence, answer questions, and produce documents or other articles;

on the hearing of a charge against a person for an offence against the law of that State or Territory apply, so far as they are capable

of application, with respect to so compelling persons for the purposes of this Division.

(2) For the purposes of this Division, the person to whom the investigation conducted by the Prosecutor, or the proceeding before the ICC, relates, is competent but not compellable to give evidence.

(3) If:

(a) a person is required to give evidence, or produce documents or other articles, for the purposes of an investigation conducted by the Prosecutor or a proceeding before the ICC; and

(b) the person is not compellable to answer a particular question, or to produce a particular document or article, for the purposes of that investigation or proceeding;

the person is not compellable to answer the question, or produce the document or article, for the purposes of this Division.

Division 6—Questioning of person being investigated or prosecuted

70 Assistance in questioning persons

(1) This section applies if:
  (a) the ICC requests assistance in questioning a person; and
  (b) the Attorney-General is satisfied that:
    (i) the request relates to an investigation of the person that is being conducted by the Prosecutor or to a prosecution of the person before the ICC; and
    (ii) the person is or may be in Australia.

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

(3) If the Attorney-General authorises the questioning of the person, a magistrate is to ask the person in writing to appear before the magistrate at a specified time and place for the purpose of being questioned.

(4) If the person appears before the magistrate:
  (a) the magistrate, a police officer or the DPP may ask the person questions to which the request relates; and
  (b) the magistrate must cause a record in writing, or in another form that the magistrate considers to be appropriate in the circumstances, to be made of the questions asked and any answers given; and
  (c) the magistrate must certify the correctness of the record; and
  (d) the magistrate must cause the record so certified to be sent to the Attorney-General.

(5) If the person refuses or fails to appear before the magistrate, the magistrate is to notify the Attorney-General in writing of the refusal or failure.

71 Procedure where person questioned

(1) Before a person is questioned under section 70, the person must be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the ICC and that he or she has the following rights:

(a) the right to remain silent without such silence being a consideration in the determination of guilt or innocence;

(b) the right to have legal assistance of his or her choosing or, if he or she does not have legal assistance, to have legal assistance assigned to him or her in any case where the interests of justice so require and without payment by him or her in such a case if he or she does not have sufficient means to pay for the assistance;

(c) the right to have his or her legal representative present when he or she is questioned unless he or she has voluntarily waived that right.

(2) If there is any inconsistency between subsection (1) and any other Australian law, subsection (1) prevails.

(3) This section does not give to any person a power to require another person to answer questions.

Division 7—Service of documents

72 Assistance in arranging service of documents

(1) This section applies if:

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

(b) the Attorney-General is satisfied that:

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

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

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

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

(a) cause the document to be served:

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

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

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

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

(4) In this section:

document includes:

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

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

(5) If:

(a) a document that is served on a person pursuant to an authority given under this section is a summons referred to in subsection (4); and

(b) the person fails to comply with the summons;

the person commits an offence punishable, on conviction, by imprisonment for a period not exceeding 12 months.

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

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

(1) This section applies if:

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

(b) the Attorney-General is satisfied that:

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

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

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

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

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

Division 9—Temporary transfer of prisoners to the ICC

74 Prisoners assisting investigation or giving evidence

(1) This section applies if:

(a) the ICC requests assistance in facilitating the temporary transfer of a person to the ICC; and

(b) the person is a prisoner who is in Australia (whether or not in custody); and

(c) the Attorney-General is satisfied that:

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

(ii) the prisoner's attendance is requested for the purpose of assisting the investigation or giving evidence at the proceeding; and

(iii) the prisoner has consented in writing to assisting the investigation or giving evidence at the proceeding; and

(iv) the prisoner will be returned without delay by the ICC to Australia when the purposes of the transfer have been fulfilled.

(2) If the prisoner is being held in custody, the Attorney-General is to execute the request by:

(a) if the prisoner is a federal prisoner and is not also a State prisoner—directing that the prisoner be released from prison for the purpose of travelling to the ICC to assist the investigation or give evidence at the proceeding; or

(b) if the prisoner is a federal prisoner and also a State prisoner—directing, subject to the obtaining of any approvals required to be obtained from an authority of the relevant State, that the prisoner be released from prison for the purpose of such travel; or

(c) if the prisoner is a State prisoner and is not also a federal prisoner—seeking any approvals required to be obtained from an authority of the relevant State;

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

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

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

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

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

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

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

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

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

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

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

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

(4) In this section:

parole includes any order or licence to be at large.

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

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

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

(a) is released from a prison under section 74 pursuant to a request by the ICC; and

(b) is in custody in connection with the request (including custody outside Australia).

Division 10—Examination of places or sites

76 Assistance in examining places or sites

(1) This section applies if:

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

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

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

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

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

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

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

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

Division 11—Search and seizure

77 Attorney-General may authorise applications for search warrants

(1) This section applies if:

(a) the ICC makes a request to the Attorney-General compliance with which may involve the issue of a search warrant in relation to evidential material; and

(b) the Attorney-General is satisfied that:

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

(ii) there are reasonable grounds to believe that the material is in Australia.

(2) The Attorney-General is to execute the request by authorising, in writing, a police officer to apply to a magistrate of the State or Territory in which that material is believed to be located for a search warrant.

78 Applications for search warrants

(1) If:

(a) a police officer is authorised under section 77 to apply for a search warrant; and

(b) the police officer has reasonable grounds for suspecting that the evidential material is, or within the applicable period referred to in subsection (3) of this section will be, at any premises;

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

(2) If:

(a) a police officer is authorised under section 77 to apply for a search warrant; and

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

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

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

(a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 116—48 hours; or

(b) otherwise—72 hours.

Note: Part 6 deals with search warrants.

Division 12—Provision of records or documents

79 Facilitating the provision of records or documents

(1) This section applies if:

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

(b) the Attorney-General is satisfied that:

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

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

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

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

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

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

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

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

Division 13—Protecting victims and witnesses and preserving evidence

80 Protecting victims and witnesses and preserving evidence

(1) This section applies if:

(a) the ICC requests assistance in protecting victims or witnesses or preserving evidence; and

(b) the Attorney-General is satisfied that:

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

(ii) the assistance sought is not prohibited by Australian law.

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

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

(a) give effect to the request; and

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

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

Division 14—Identification, tracing, and freezing or seizure, of proceeds of crimes within the jurisdiction of the ICC

Subdivision A—Preliminary

81 Application of Division

This Division applies if:

(a) the ICC makes a request to the Attorney-General for the identification, tracing, and freezing or seizure, of the proceeds of a crime within the jurisdiction of the ICC; and

(b) the Attorney-General is satisfied that a person (in this Division called the ***defendant***):

(i) has been, or is about to be, charged with the crime before the ICC; or

(ii) has been convicted by the ICC of the crime.

Subdivision B—Restraining orders

82 Applying for and making restraining orders

(1) If the request from the ICC referred to in section 81 involves the making of a restraining order, the Attorney-General is to authorise the DPP to apply to a specified court for a restraining order against the property concerned.

(2) The court specified must be a court with proceeds jurisdiction in a State or Territory in which the property, or some or all of the property, is reasonably suspected of being located.

(3) If so authorised, the DPP may apply for such a restraining order against that property in respect of the crime.

(4) Part 2-1 of the Proceeds of Crime Act applies to the application, and to any restraining order made as a result.

(5) It applies as if:

(a) references in that Part to an indictable offence were references to the crime within the jurisdiction of the ICC; and

(b) references in that Part to a court with proceeds jurisdiction were references to the court specified in the DPP's authorisation under subsection (1); and

(c) references in that Part to a person charged with an indictable offence were references to a person against whom a criminal proceeding in respect of a crime within the jurisdiction of the ICC has commenced in the ICC; and

(d) references in that Part to it being proposed to charge a person with an indictable offence were references to it being reasonably suspected that criminal proceedings are about to commence against the person in the ICC in respect of a crime within the jurisdiction of the ICC; and

(e) paragraphs 17(1)(e) and (f), subsections 17(3) and (4) and sections 18 to 20, 29, 44 and 45 of that Act were omitted.

83 Excluding property from restraining orders

If:

(a) a court makes a restraining order under Part 2-1 of the Proceeds of Crime Act against property in respect of the crime within the jurisdiction of the ICC; and

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

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

(c) in a case where the applicant is not the defendant:

(i) the applicant was not, in any way, involved in the commission of the crime; and

(ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the crime—the property was not proceeds of the crime; or

(d) in any case—it is in the public interest to do so having regard to any financial hardship or other consequence of the interest remaining subject to the order.

84 When restraining order ceases to be in force

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

(2) If:

(a) a restraining order is made in reliance on a person's conviction of a crime within the jurisdiction of the ICC or the charging of a person with such a crime; or

(b) a restraining order is made in reliance on the proposed charging of a person with a crime within the jurisdiction of the ICC and the person is, within one month after the making of the order, charged with the crime or a related crime within the jurisdiction of the ICC;

the following provisions have effect:

(c) if the charge is withdrawn and the person is not charged with a related crime within the jurisdiction of the ICC within 28 days after the day on which the charge is withdrawn, the restraining order ceases to be in force at the end of that period;

(d) if the person is acquitted of the charge and the person is not charged with a related crime within the jurisdiction of the ICC within 28 days after the day on which the acquittal occurs, the restraining order ceases to be in force at the end of that period;

(e) if some or all of the property subject to the restraining order is forfeited under Part 11, the restraining order, to the extent to which it relates to that property, ceases to be in force when that property is forfeited;

(f) the restraining order ceases to be in force if and when it is revoked.

Subdivision C—Production orders relating to crimes within the jurisdiction of the ICC

85 Requests for production orders

(1) If:

(a) the request from the ICC referred to in section 81 involves the issue of a production order requiring that a property-tracking document be produced or made available for inspection in accordance with Australian law; and

(b) the Attorney-General is satisfied that:

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

(ii) there are reasonable grounds for suspecting that a property-tracking document in relation to the crime is located in Australia;

the Attorney-General may authorise an authorised officer of an enforcement agency to apply to a magistrate of a specified State or Territory for a production order under the Proceeds of Crime Act in respect of the crime for the purpose of obtaining possession of the property-tracking document.

(2) The State or Territory specified must be a State or Territory in which the document is, or some or all of the documents are, reasonably suspected of being located.

86 Applying for and making production orders

(1) If so authorised, the authorised officer may apply for such a production order against the property in respect of the crime.

(2) Part 3-2 of the Proceeds of Crime Act applies to the application, and to any production order made as a result.

(3) It applies as if:

(a) references in that Part to an indictable offence or to a serious offence were references to the crime within the jurisdiction of the ICC; and

(b) references in that Part to a magistrate were references to a magistrate of the State or Territory specified in the authorised officer's authorisation under subsection 85(1); and

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

87 Retaining produced documents

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

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

Subdivision D—Notices to financial institutions

88 Giving notices to financial institutions

(1) The Attorney-General or a senior Departmental officer may give a written notice to a financial institution requiring the institution to provide to an authorised officer any information or documents relevant to any one or more of the following:

(a) determining whether an account is held by a specified person with the financial institution;

(b) determining whether a particular person is a signatory to an account;

(c) if a person holds an account with the institution, the current balance of the account;

(d) details of transactions on such an account over a specified period of up to 6 months;

(e) details of any related accounts (including names of those who hold those accounts);

(f) a transaction conducted by the financial institution on behalf of a specified person.

(2) The Attorney-General or the senior Departmental officer must not issue the notice unless he or she reasonably believes that giving the notice is required:

(a) to determine whether to take any action under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division; or

(b) in relation to proceedings under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division.

(3) In this section:

senior Departmental officer has the same meaning as in the Proceeds of Crime Act.

89 Contents of notices to financial institutions

The notice must:

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

(i) to determine whether to take any action under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division; or

(ii) in relation to proceedings under this Division, or under the Proceeds of Crime Act in connection with the operation of this Division;

(as the case requires); and

(b) specify the name of the financial institution; and

(c) specify the kind of information or documents required to be provided; and

(d) specify the form and manner in which that information or those documents are to be provided; and

(e) state that the information or documents must be provided within 14 days after the day on which the notice is received; and

(f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 92 (disclosing existence or nature of a notice); and

(g) set out the effect of section 93 (failing to comply with a notice).

90 Protection from suits etc. for those complying with notices

(1) No action, suit or proceeding lies against:

(a) a financial institution; or

(b) an officer, employee or agent of the institution acting in the course of that person's employment or agency;

in relation to any action taken by the institution or person under a notice under section 88 or in the mistaken belief that action was required under the notice.

(2) A financial institution which, or an employee or agent of a financial institution who, provides information under a notice under section 88 is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

91 Making false statements in applications

A person is guilty of an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, a notice under section 88.

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

92 Disclosing existence or nature of notice

A person is guilty of an offence if:

(a) the person is given a notice under section 88; and

(b) the notice states that information about the notice must not be disclosed; and

(c) the person discloses the existence or nature of the notice.

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

93 Failing to comply with a notice

A person is guilty of an offence if:

(a) the person is given a notice under section 88; and

(b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

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

Subdivision E—Monitoring orders relating to crimes within the jurisdiction of the ICC

94 Requests for monitoring orders

(1) If:

(a) the request from the ICC referred to in section 81 involves the issue of an order directing a financial institution to give information about transactions conducted through an account with the financial institution in Australia; and

(b) the Attorney-General is satisfied that:

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

(ii) information about transactions conducted through the account with the financial institution in Australia is reasonably suspected of being relevant to the investigation or proceedings;

the Attorney-General may authorise an authorised officer of an enforcement agency to apply to a judge of a specified court for a monitoring order under the Proceeds of Crime Act in respect of the crime within the jurisdiction of the ICC for the purpose of obtaining the information requested by the ICC.

(2) The court specified must be a court of a State or Territory that has jurisdiction to deal with criminal matters on indictment.

95 Applying for and making monitoring orders

(1) If so authorised, the authorised officer may apply for such a monitoring order against the account in respect of the crime.

(2) Part 3-4 of the Proceeds of Crime Act applies to the application, and to any monitoring order made as a result.

(3) It applies as if:

(a) references in that Part to a serious offence were references to a crime within the jurisdiction of the ICC; and

(b) disclosing the existence or the operation of the order for the purpose of complying with a person's obligations under section 96 of this Act were a purpose specified in subsection 223(4) of the Proceeds of Crime Act.

96 Passing on information given under monitoring orders

If an enforcement agency is given information under a monitoring order made in relation to a crime within the jurisdiction of the ICC, the enforcement agency must, as soon as practicable after receiving the information, pass the information on to:

(a) the Attorney-General; or

(b) an APS employee in the Attorney-General's Department specified by the Attorney-General by written notice to the enforcement agency.

Subdivision F—Search warrants relating to proceeds of crime and property-tracking documents

97 Requests for search warrants

(1) If:

(a) the request from the ICC referred to in section 81 involves the issue of a search warrant relating to the proceeds of the

crime within the jurisdiction of the ICC or a property-tracking document; and

(b) the Attorney-General is satisfied that:

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

(ii) proceeds of the crime, or a property-tracking document in relation to the crime, is reasonably suspected of being located in Australia;

the Attorney-General may authorise an authorised officer of an enforcement agency to apply to a magistrate of a specified State or Territory for a search warrant under the Proceeds of Crime Act in relation to the proceeds or document.

(2) The State or Territory specified must be a State or Territory in which:

(a) the proceeds, or some or all of the proceeds, are reasonably suspected of being located; or

(b) the document is, or some or all of the documents are, reasonably suspected of being located.

98 Applying for and issuing search warrants

(1) If so authorised, the authorised officer may apply for such a search warrant, in relation to those proceeds or that document, in respect of the crime.

(2) Part 3-5 of the Proceeds of Crime Act applies to the application, and to any search warrant issued as a result.

(3) It applies as if:

(a) references in that Part to a property-tracking document were references to a property-tracking document relating to the crime; and

(b) references in that Part to a magistrate were references to a magistrate of the State or Territory specified in the authorised officer's authorisation under subsection 97(1); and

(c) paragraph 228(1)(d) and sections 256 to 258 of that Act were omitted.

99 Seizure of other property and documents

(1) A search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a crime within the jurisdiction of the ICC authorises an authorised officer to seize property or a thing that he or she finds and believes on reasonable grounds to be:

(a) proceeds of the crime or a property-tracking document in relation to the crime, although not of the kind specified in the warrant; or

(b) proceeds of, or a property-tracking document in relation to, another crime within the jurisdiction of the ICC in relation to which a search warrant issued under that Part is in force; or

(c) something that:

(i) is relevant to a proceeding in the ICC in respect of the crime within the jurisdiction of the ICC; or

(ii) will afford evidence as to the commission of an Australian criminal offence.

(2) However, this section only applies if the authorised officer believes on reasonable grounds that it is necessary to seize the property or thing in order to prevent its concealment, loss or destruction or its use in committing an offence.

100 Return of seized property to third parties

(1) A person who claims an interest in property (other than a property-tracking document) that has been seized under a search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a crime within the jurisdiction of the ICC may apply to a court for an order that the property be returned to the person.

(2) The court must be a court of the State or Territory in which the warrant was issued that has proceeds jurisdiction.

(3) The court must order the head of the authorised officer's enforcement agency to return the property to the applicant if the court is satisfied that:

(a) the applicant is entitled to possession of the property; and

(b) the property is not proceeds of the relevant crime within the jurisdiction of the ICC; and

(c) the person who is believed or alleged to have committed the relevant crime within the jurisdiction of the ICC has no interest in the property.

(4) If the court makes such an order, the head of the authorised officer's enforcement agency must arrange for the property to be returned to the applicant.

(5) This section does not apply to property that has been seized because it may afford evidence as to the commission of an Australian criminal offence.

101 Dealing with seized property (other than property-tracking documents)

Property covered by this section

(1) Property (other than a property-tracking document) must be dealt with in accordance with this section if:

(a) it has been seized under a search warrant issued, pursuant to an authorisation under section 97, under Part 3-5 of the Proceeds of Crime Act in relation to a crime within the jurisdiction of the ICC; and

(b) it has not been seized under paragraph 99(1)(c).

General rule—property to be returned after 30 days

(2) If, at the end of the period of 30 days after the day on which the property was seized:

(a) a forfeiture order in relation to the property has been registered in a court under Part 11; and

(b) a restraining order has not been made under Subdivision B in respect of the property in relation to the crime within the jurisdiction of the ICC;

the head of the enforcement agency whose authorised officer seized the property must, unless subsection (3), (5) or (7) applies, arrange for the property to be returned to the person from whose

possession it was seized as soon as practicable after the end of that period.

Effect of restraining orders being registered or obtained

(3) If, before the end of that period, a restraining order is made under Subdivision B in respect of the property in relation to the crime within the jurisdiction of the ICC, the head of the enforcement agency whose authorised officer seized the property:

(a) if there is in force, at the end of that period, a direction by a court that the Official Trustee take custody and control of the property—must arrange for the property to be given to the Official Trustee in accordance with the direction; or

(b) if there is in force at the end of that period an order under subsection (6) in relation to the property—must arrange for the property to be retained until it is dealt with in accordance with another provision of this Act or the Proceeds of Crime Act.

(4) If the property is subject to a direction of a kind referred to in paragraph (3)(a), the Proceeds of Crime Act applies to the property as if it were controlled property within the meaning of that Act.

Retaining property despite restraining orders

(5) If, at a time when the property is in the possession of the head of the enforcement agency whose authorised officer seized the property, a restraining order has been made under Subdivision B in respect of the property in relation to the crime within the jurisdiction of the ICC, the head of the enforcement agency may apply to the court in which the restraining order was registered, or by which the restraining order was made, for an order that the head of the enforcement agency retain possession of the property.

(6) If the court is satisfied that the head of the enforcement agency requires the property to be dealt with in accordance with a request under section 81 that the restraining order be obtained, the court may make an order that the head of the enforcement agency may retain the property for so long as the property is so required.

Effect of forfeiture orders by the ICC being registered or obtained

(7) If, while the property is in the possession of the head of the enforcement agency whose authorised officer seized it, a forfeiture order in respect of the property is registered in a court under Part 11, the head of the enforcement agency must deal with the property as required by the forfeiture order.

102 Dealing with seized property-tracking documents

(1) An authorised officer who takes possession of a property-tracking document under a warrant issued in respect of a crime within the jurisdiction of the ICC may retain the document for a period not exceeding one month pending a written direction from the Attorney-General as to how to deal with the document.

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

Division 15—Other types of assistance

103 Other types of assistance

(1) This section applies if:

(a) the ICC requests any type of assistance referred to in paragraph 7(1)(b); and

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

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

(a) the ICC does not modify the request as contemplated by paragraph 3 of article 93 of the Statute and section 53; or

(b) the assistance requested cannot be provided in a way referred to in paragraph 5 of article 93 of the Statute and subsection 11(2) or can only be provided subject to conditions that the ICC does not accept.

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

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

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

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

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

Division 16—Miscellaneous

104 Effect of authorisation to execute request

At any time before a formal response to a request for cooperation is sent to the ICC, the Attorney-General may decide that the request is to be refused, or the execution of the request is to be postponed, on a ground specified in section 51 or 52 even if the Attorney-General has previously authorised the execution of the request.

105 Request may relate to assistance sought by defence

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

106 Prosecutor may execute request

(1) The Prosecutor may execute a request for cooperation that does not involve the taking of any compulsory measures in Australia in the circumstances specified in paragraph 4 of article 99 of the Statute.

(2) If the Attorney-General identifies problems with the execution of a request to which paragraph 4(b) of article 99 of the Statute relates, the Attorney-General must, without delay, consult with the ICC in order to resolve the matter.

(3) The provisions of this Act and the Statute, allowing a person heard or examined by the ICC under article 72 of the Statute to invoke restrictions designed to prevent disclosure of confidential information connected with national security, apply to the execution of requests for assistance under article 99 of the Statute.

Part 5—Investigations or sittings of the ICC in Australia

107 Prosecutor may conduct investigations in Australia

The Prosecutor may conduct investigations in Australia:

(a) in accordance with Part 9 of the Statute; or

(b) as authorised by the Pre-Trial Chamber under paragraph 3(d) of article 57 of the Statute.

108 ICC sittings in Australia

(1) The ICC may sit in Australia for the purpose of performing its functions under the Statute or the Rules.

(2) Without limiting subsection (1), the ICC may sit in Australia for the purpose of:

(a) taking evidence; or

(b) conducting or continuing a proceeding; or

(c) giving judgment in a proceeding; or

(d) reviewing a sentence.

109 ICC's powers while sitting in Australia

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

110 ICC may require witnesses at sittings in Australia to give undertakings as to truthfulness of their evidence

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

Part 6—Search, seizure and powers of arrest

Division 1—Search warrants

111 When search warrants can be issued

(1) A magistrate may issue a warrant to search premises if:

(a) an application has been made to the magistrate under subsection 27(1) or 78(1); and

(b) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the applicable period referred to in subsection (3) of this section will be, any evidential material at the premises.

(2) A magistrate may issue a warrant authorising an ordinary search or a frisk search of a person if:

(a) an application has been made to the magistrate under subsection 27(2) or 78(2); and

(b) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the person has, or within the applicable period referred to in subsection (3) of this section will have, any evidential material in his or her possession.

(3) For the purposes of subsections (1) and (2), the ***applicable period*** is:

(a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 116—48 hours; or

(b) otherwise—72 hours.

(4) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person must state that suspicion, and the grounds for that suspicion, in the information.

(5) If the person applying for the warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

(6) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.

(7) A magistrate in a State may:

(a) issue a warrant in relation to premises or a person in that State; or

(b) issue a warrant in relation to premises or a person in an external Territory; or

(c) issue a warrant in relation to premises or a person in another State or in the Jervis Bay Territory if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or

(d) issue a warrant in relation to a person wherever the person is in Australia if he or she is satisfied that it is not possible to predict where the person may be.

112 Content of warrants

(1) If a magistrate issues a search warrant, the magistrate is to state in the warrant:

(a) the purpose for which it is issued, including the crime within the jurisdiction of the ICC to which the application for the warrant relates; and

(b) a description of the premises to which the warrant relates or the name or description of the person to whom it relates; and

(c) the kinds of evidential material that are to be searched for under the warrant; and

(d) the name of the police officer who, unless he or she inserts the name of another police officer in the warrant, is to be responsible for executing the warrant; and

(e) the period for which the warrant remains in force, which must not be more than:

(i) if the warrant is issued on an application by telephone, telex, fax or other electronic means as provided by section 116—48 hours; or

(ii) otherwise—7 days; and

(f) whether the warrant may be executed at any time or only during particular hours.

(2) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.

(3) The magistrate is also to state, in a warrant in relation to premises:

(a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material; or

(ii) a thing relevant to an indictable offence against an Australian law;

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

(b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

(4) The magistrate is also to state, in a warrant in relation to a person:

(a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, in the possession of the person or in or on a recently used conveyance, being a thing

that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material; or

(ii) a thing relevant to an indictable offence against an Australian law;

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

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

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

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

(a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and

(b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and

(c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and

(d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material; or

(ii) things relevant to an indictable offence against an Australian law;

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

(e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be seizable items; and

(f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

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

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

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

(a) to:

(i) search the person as specified in the warrant; and

(ii) search things found in the possession of the person; and

(iii) search any recently used conveyance;

for things of the kind specified in the warrant; and

(b) to:

(i) seize things of that kind; and

(ii) record fingerprints from things; and

(iii) take forensic samples from things;

found in the course of the search; and

(c) to seize other things found in the possession of the person or in or on the conveyance in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:

(i) evidential material; or

(ii) things relevant to an indictable offence against an Australian law;

if the executing officer or a police officer assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use

in committing the crime within the jurisdiction of the ICC or an indictable offence against an Australian law; and

(d) to seize other things found in the course of the search that the executing officer or a police officer assisting believes on reasonable grounds to be seizable items.

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

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

115 Restrictions on personal searches

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

116 Warrants may be issued by telephone etc.

(1) A police officer may apply to a magistrate for a warrant by telephone, telex, fax or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

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

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

(4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate requires, is satisfied that:

(a) a warrant in the terms of the application should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the magistrate may complete and sign the same form of warrant as would be issued under section 111.

117 Formalities relating to warrants issued by telephone etc.

(1) If the magistrate decides to issue the warrant under section 116, the magistrate is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(2) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(3) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or send to the magistrate:

(a) the form of warrant completed by the applicant; and

(b) if the information referred to in subsection 116(3) was not sworn—that information duly sworn.

(4) The magistrate is to attach to the documents provided under subsection (3) the form of warrant completed by the magistrate.

(5) If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under section 116 was duly authorised; and

(b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Division 2—Provisions relating to execution of search warrants

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

In executing a search warrant:

(a) the executing officer may obtain such assistance; and

(b) the executing officer, or a person who is a police officer assisting in executing the warrant, may use such force against persons and things; and

(c) a person who is not a police officer and has been authorised to assist in executing the warrant may use such force against things;

as is necessary and reasonable in the circumstances.

119 Copy of warrant to be shown to occupier etc.

(1) If a search warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer or an officer assisting must make available to that person a copy of the warrant.

(2) If a search warrant in relation to a person is being executed, the executing officer or an officer assisting must make available to that person a copy of the warrant.

(3) If a person is searched under a search warrant in relation to premises, the executing officer or an officer assisting must show the person a copy of the warrant.

(4) The executing officer must identify himself or herself to the person at the premises or the person being searched.

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

120 Specific powers available to officers executing warrants

(1) In executing a search warrant in relation to premises, the executing officer or an officer assisting may:

(a) for a purpose incidental to execution of the warrant; or

(b) if the occupier of the warrant premises consents in writing;

take photographs (including video recordings) of the premises or of things at the premises.

(2) In executing a search warrant in relation to premises, the executing officer and the police officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the warrant premises:

(a) for not more than one hour; or

(b) for a longer period if the occupier of the premises consents in writing.

(3) If:

(a) the execution of a search warrant is stopped by an order of a court; and

(b) the order is later revoked or reversed on appeal; and

(c) the warrant is still in force;

the execution of the warrant may be completed.

121 Use of equipment to examine or process things

(1) The executing officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether the things may be seized under the warrant.

(2) If:

(a) it is not practicable to examine or process the things at the warrant premises; or

(b) the occupier of the premises consents in writing;

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

(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

(a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or his or her representative to be present during the examination or processing.

(4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it may be seized under the warrant if the executing officer or police officer assisting believes on reasonable grounds that:

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or thing.

122 Use of electronic equipment at premises

(1) The executing officer or an officer assisting may operate electronic equipment at the warrant premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can, by using facilities at the premises, be put in a documentary form—operate the facilities to put the material in that form and seize the documents so produced; or

(c) if the material can be transferred to a disk, tape or other storage device:

(i) that is brought to the premises; or

(ii) that is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

(3) Equipment may be seized under paragraph (2)(a) only if:

(a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or

(b) possession by the occupier of the equipment could constitute an offence against an Australian law.

(4) If the executing officer or an officer assisting believes on reasonable grounds that:

(a) evidential material may be accessible by operating electronic equipment at the warrant premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

(5) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured:

(a) for up to 24 hours; or

(b) until the equipment has been operated by the expert;

whichever happens first.

(7) If the executing officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available

within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.

(8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(9) Division 1 applies, with such modifications as are necessary, to issuing an extension.

123 Compensation for damage to electronic equipment

(1) This section applies if:

(a) damage is caused to equipment as a result of it being operated as mentioned in section 121 or 122; or

(b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;

because of:

(c) insufficient care being exercised in selecting the person who was to operate the equipment; or

(d) insufficient care being exercised by the person operating the equipment.

(2) The Commonwealth must pay to the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings against the Commonwealth in the Federal Court for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the warrant premises or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1), ***damage to data*** includes damage by erasure of data or addition of other data.

124 Copies of seized things to be provided

(1) Subject to subsection (2), if an executing officer or officer assisting seizes, under a warrant in relation to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

the executing officer or officer assisting must, if requested to do so by the occupier of the warrant premises or another person who apparently represents the occupier and is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

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

(a) the thing was seized under paragraph 122(2)(b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against an Australian law.

125 Occupier entitled to be present during search

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

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

126 Receipts for things seized under warrant

(1) If a thing is seized under a warrant or moved under subsection 121(2), the executing officer or an officer assisting must provide a receipt for the thing.

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

Division 3—Stopping and searching conveyances

127 Searches without warrant in emergency situations

(1) This section applies if a police officer suspects, on reasonable grounds, that:

(a) evidential material is in or on a conveyance; and

(b) it is necessary to exercise a power under subsection (2) in order to prevent the material from being concealed, lost or destroyed; and

(c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.

(2) The police officer may:

(a) stop and detain the conveyance; and

(b) search the conveyance, and any container in or on the conveyance, for the material; and

(c) seize the material if he or she finds it there.

(3) If, in the course of searching for the material, the police officer finds other evidential material or a thing relevant to an offence against an Australian law, the police officer may seize that material or thing if he or she suspects, on reasonable grounds, that:

(a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and

(b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.

(4) The police officer must exercise his or her powers subject to section 128.

128 How a police officer exercises a power to search without warrant

When a police officer exercises a power under section 127 in relation to a conveyance, he or she:

(a) may use such assistance as is necessary; and

(b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and

(c) must not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and

(d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless:

(i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or

(ii) it is not possible to give that person such an opportunity.

Division 4—Arrest and related matters

129 Power to enter premises to arrest person

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

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

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

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

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

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

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

(3) In subsection (2):

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

130 Use of force in making arrest

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

(2) Without limiting the operation of subsection (1), a police officer must not, in the course of arresting a person under this Act or pursuant to a warrant issued under this Act:

(a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the police officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the police officer); or

(b) if the person is attempting to escape arrest by fleeing—do such a thing unless:

(i) the police officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the police officer); and

(ii) the person has, if practicable, been called on to surrender and the police officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

131 Persons to be informed of grounds of arrest

(1) A person who arrests another person under this Act or pursuant to a warrant issued under this Act must inform the other person, at the time of the arrest, of the crime in respect of which, or, if the other person is arrested under section 182, the reason for which, the other person is being arrested.

(2) It is sufficient if the other person is informed of the substance of the crime or reason, and it is not necessary that this be done in language of a precise or technical nature.

(3) Subsection (1) does not apply to the arrest of the other person if:

(a) the other person should, in the circumstances, know the substance of the crime in respect of which, or the reason for which, he or she is being arrested; or

(b) the other person's actions make it impracticable for the person making the arrest to inform the other person of the crime in respect of which, or the reason for which, he or she is being arrested.

132 Power to conduct a frisk search of an arrested person

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

(a) conduct a frisk search of the person at or soon after the time of arrest; and

(b) seize any seizable items found as a result of the search.

133 Power to conduct an ordinary search of an arrested person

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

(a) evidential material relating to the crime to which the person's custody relates; or

(b) a seizable item;

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

134 Power to conduct search of arrested person's premises

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

(a) evidential material relating to the crime to which the person's custody relates; or

(b) seizable items.

135 Power to conduct an ordinary search or strip search

(1) If a person who has been arrested under this Act or pursuant to a warrant issued under this Act is brought to a police station, a police officer may:

(a) if an ordinary search of the person has not been conducted—conduct an ordinary search of the person; or

(b) subject to this section, conduct a strip search of the person.

(2) A strip search may be conducted if:

(a) a police officer suspects on reasonable grounds that:

(i) the person has in his or her possession evidential material relating to the crime to which the person's custody relates; or

(ii) the person has in his or her possession a seizable item; or

(iii) a visual inspection of the person's body will provide evidence of the person's involvement in that crime; and

(b) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that thing or to discover that evidence; and

(c) a police officer of the rank of superintendent or higher has approved the conduct of the search.

(3) Subject to section 136, a strip search may also be conducted if the person consents in writing.

(4) Subject to section 136, a strip search may be conducted in the presence of a medical practitioner, who may assist in the search.

(5) The approval may be obtained by telephone, telex, fax or other electronic means.

(6) A police officer who gives or refuses to give an approval for the purposes of paragraph (2)(c) must make a record of the decision and of the reasons for the decision.

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

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

136 Rules for conduct of strip search

(1) A strip search:

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

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

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

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

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

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

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

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

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

(h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the crime to which the person's custody relates; and

(i) must not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to establish the person's involvement in the crime to which the person's custody relates.

(2) In deciding whether to make an order referred to in paragraph (1)(f), the court must have regard to:

(a) the serious nature of the crime to which the person's custody relates; and

(b) the age or any disability of the person; and

(c) such other matters as the court thinks fit.

(3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.

(4) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.

(5) If any of a person's garments are seized as a result of a strip search, the person must be provided with adequate clothing.

Division 5—General

137 Conduct of ordinary searches and frisk searches

(1) An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

(2) An officer assisting who is not a police officer must not take part in an ordinary search or a frisk search of a person under this Part.

138 Announcement before entry

(1) A police officer must, before any person enters premises under a warrant or to arrest a person:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

(2) A police officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

(a) the safety of a person (including the police officer); or

(b) that the effective execution of the warrant or the arrest is not frustrated.

139 Offences relating to telephone warrants

A person must not:

(a) state in a document that purports to be a form of warrant under section 116 the name of a magistrate unless that magistrate issued the warrant; or

(b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or

(c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that:

(i) the person knows has not been approved by a magistrate under that section; or

(ii) the person knows to depart in a material particular from the terms authorised by a magistrate under that section; or

(d) send to a magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

140 Retention of things seized

(1) If a police officer seizes a thing under this Part, he or she must deliver it into the custody and control of the Commissioner of Police of the Australian Federal Police.

(2) Subject to subsection (5), the Commissioner must:

(a) inform the Attorney-General that the thing has been so delivered; and

(b) retain the thing pending the Attorney-General's direction under subsection (3) about how to deal with the thing; and

(c) comply with any such direction that the Attorney-General gives.

(3) The Attorney-General may, by written notice, give the Commissioner a direction about how to deal with the thing.

(4) Without limiting the directions that may be given, a direction may require the Commissioner to send the thing to the ICC.

(5) The Attorney-General must direct the Commissioner to return the thing if:

(a) the reason for its seizure no longer exists; or

(b) it is decided that the thing is not to be used in evidence by the ICC or in respect of criminal proceedings in Australia;

whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

141 Magistrate may permit a thing to be retained

(1) If a thing is seized under section 140 and:

(a) before the end of 60 days after the seizure; or

(b) before the end of a period previously specified in an order of a magistrate under this section;

proceedings in respect of which the thing may afford evidence have not commenced, the Commissioner of Police of the Australian Federal Police may apply to a magistrate for an order that he or she may retain the thing for a further period.

(2) If the magistrate is satisfied that it is necessary for the Commissioner to continue to retain the thing:

(a) for the purposes of an investigation as to whether an offence has been committed; or

(b) to enable evidence of an offence to be secured for the purposes of a prosecution;

the magistrate may order that the Commissioner may retain the thing for a period specified in the order.

(3) Before making the application, the Commissioner must:

(a) take reasonable steps to discover who has an interest in the retention of the thing; and

(b) if it is practicable to do so, notify each person who the Commissioner believes has such an interest that the application has been made.

Part 7—Information provided in confidence by third party

142 Disclosure of information provided in confidence by third party

(1) If the ICC requests the giving of information or documents that were provided to Australia on a confidential basis by a foreign country or by an intergovernmental or international organisation (in either case referred to as the ***originator***), the Attorney-General must seek the consent of the originator before giving the information or documents to the ICC.

(2) If the originator is a party to the Statute that consents to disclosure of the information or documents, the Attorney-General must, subject to Part 8, give the information or documents to the ICC.

(3) If the originator is a party to the Statute that undertakes to resolve the issue of disclosure of the information or documents with the ICC under article 73 of the Statute, the Attorney-General must inform the ICC of the undertaking.

(4) If the originator is not a party to the Statute and refuses to consent to disclosure of the information or documents, the Attorney-General must inform the ICC that he or she is unable to give the information or documents because of an existing obligation of confidentiality to the originator.

(5) If the originator is not a party to the Statute and consents to disclosure of the information or documents, the Attorney-General must, subject to Part 8, give the information or documents to the ICC.

143 Request for Australia's consent to disclosure

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

(a) consent to the disclosure; or

(b) undertake to deal with the matter in accordance with Part 8.

Part 8—Protection of Australia's national security interests

144 How national security issues are to be dealt with

If the Attorney-General becomes aware of an issue relating to Australia's national security interests arising at any stage of any proceedings before the ICC, the issue is to be dealt with in the manner provided in this Part.

145 Request for cooperation involving national security

(1) If a request for cooperation appears to relate to the disclosure of any information or documents that would, in the Attorney-General's opinion, prejudice Australia's national security interests, the request must be dealt with in accordance with the procedure specified in sections 148 and 149.

(2) If, after the procedure specified in sections 148 and 149 is followed, the request for cooperation is not able to be resolved, the Attorney-General may refuse the request or decline to authorise the disclosure.

146 Request to disclose information or documents involving national security

(1) This section applies if a person who has been requested to disclose information or documents to the ICC:

(a) refuses to do so on the ground that disclosure would prejudice Australia's national security interests; or

(b) refers the matter to the Attorney-General on that ground.

(2) The Attorney-General must determine whether or not he or she is of the opinion that the disclosure would prejudice Australia's national security interests.

(3) If the Attorney-General forms the opinion that the disclosure would prejudice Australia's national security interests, the request for disclosure must be dealt with in accordance with the procedure specified in sections 148 and 149.

(4) If, after the procedure specified in sections 148 and 149 is followed, the request for disclosure is not able to be resolved, the Attorney-General may refuse the request or decline to authorise the disclosure.

147 Other situations involving national security

(1) If, in any circumstances other than those mentioned in sections 145 and 146, the Attorney-General is of the opinion that the disclosure of information or documents to the ICC would prejudice Australia's national security interests, the matter must be dealt with in accordance with the procedure specified in section 148 and subsection 149(1).

(2) Without limiting subsection (1), if:

(a) the Attorney-General learns that information or documents relating to Australia are being, or are likely to be, disclosed at any stage of the proceedings before the ICC and intervenes in accordance with paragraph 4 of article 72 of the Statute; and

(b) after the procedure specified in section 148 and subsection 149(1) is followed, the matter is not resolved;

the Attorney-General may decline to authorise the disclosure.

148 Consultation with ICC required

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

149 Procedure where no resolution

(1) If, after the consultation, the Attorney-General decides that there are no means or conditions under which the information or documents could be disclosed without prejudice to Australia's

national security interests, the Attorney-General must notify the ICC, in accordance with paragraph 6 of article 72 of the Statute, of the specific reasons for his or her decision unless a specific description of the reasons would itself result in prejudice to Australia's national security interests.

(2) If:

(a) the ICC determines that the disclosure is relevant and necessary for the establishment of the guilt or innocence of the accused; and

(b) the issue of disclosure arises in the circumstances specified in section 145 or 146; and

(c) the Attorney-General is of the opinion that Australia's national security interests would be prejudiced by the disclosure; and

(d) the ICC requests further consultations for the purpose of considering the representations, which may include hearings in camera and ex parte;

the Attorney-General must consult with the ICC.

Part 9—Transportation of persons in custody through Australia

150 Transportation of persons in custody through Australia

(1) This Part applies to a person (the ***transportee***) who:

(a) is being surrendered to the ICC by a foreign country under article 89 of the Statute; or

(b) has been sentenced to imprisonment by the ICC and is being transferred to or from the ICC, or between foreign countries, in connection with the sentence.

(2) Subject to this section, the Attorney-General must authorise the transportation of the transportee through Australia in the custody of a person specified by the Attorney-General if the ICC has, in accordance with section 8, made a request for the transportation that contains:

(a) a description of the transportee; and

(b) a brief statement of the facts of the case and their legal characterisation; and

(c) the warrant for the arrest and surrender of the transportee.

(3) The Attorney-General must not authorise the transportation through Australia of a person referred to in paragraph (1)(a) if the Attorney-General reasonably believes that the transportation through Australia would impede or delay the surrender of the person to the ICC.

(4) No authorisation is required for the transportation of the transportee through Australia by air if no landing of the aircraft is scheduled to take place in Australia.

(5) However, if an unscheduled landing of an aircraft carrying the transportee takes place in Australia, the following provisions have effect:

(a) a police officer may detain the transportee in custody for a period of 96 hours from the time of the landing;

(b) the Attorney-General must seek from the ICC a request for the transportation of the transportee through Australia;

(c) if the Attorney-General receives such a request within that period—the transportation of the transportee may continue and the transportee is to continue to be detained in custody during the transportation;

(d) if the Attorney-General does not receive such a request within that period—the transportee must be released from custody.

(6) Despite any authorisation by the Attorney-General of the transportation through Australia of the transportee, that transportation is subject to the requirements of section 42 of the *Migration Act 1958*.

Part 10—Enforcement in Australia of reparation orders made and fines imposed by ICC

151 Assistance with enforcement of orders for reparation to victims

(1) This section applies if:

(a) the ICC:

(i) makes an order under article 75 of the Statute requiring reparation; and

(ii) requests that the order be enforced as if article 109 of the Statute were applicable; and

(b) neither the conviction in respect of which the order was made nor the order requiring reparation is subject to appeal or further appeal in the ICC.

(2) The Attorney-General is to execute the request by authorising, by written notice in the statutory form, the DPP to apply for the registration of the order in an appropriate court.

152 Assistance with enforcement of orders imposing fines

(1) This section applies if:

(a) the ICC:

(i) orders payment of a fine under paragraph 2(a) of article 77 of the Statute; and

(ii) requests that the order be enforced in accordance with article 109 of the Statute; and

(b) neither the conviction in respect of which the order was made nor the order for payment of the fine is subject to appeal or further appeal in the ICC.

(2) The Attorney-General is to execute the request by authorising, by written notice in the statutory form, the DPP to apply for the registration of the order in an appropriate court.

153 Registration of order

(1) If the DPP applies to a court for registration of an order in accordance with an authorisation under section 151 or 152, the court must register the order and must direct the DPP to publish notice of the registration in the manner and within the period that the court considers appropriate.

(2) An order is to be registered in a court in the same way as the court registers an order made by another Australian court.

(3) Subject to subsection 154(3), a faxed copy of an authenticated copy of an order is, for the purposes of subsection (2) of this section, taken to be the same as the authenticated copy.

154 Effect of order

(1) An order referred to in section 151 that is registered in a court has effect, and may be enforced, as if it were an order for the payment of money made by the court at the time of the registration.

(2) An order referred to in section 152 that is registered in a court has effect, and may be enforced, as if it were an order imposing a fine made by the court at the time of the registration.

(3) A registration effected by registering a faxed copy of an authenticated copy of an order ceases to have effect after 21 days unless the authenticated copy of the order has been filed by then in the court that registered the order.

Part 11—Forfeiture of proceeds of international crimes

155 Requests for enforcement of forfeiture orders

(1) This section applies if:

(a) the ICC requests the Attorney-General to make arrangements for the enforcement of a forfeiture order made in relation to property that is reasonably suspected of being in Australia; and

(b) the Attorney-General is satisfied:

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

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

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

(3) The court that the Attorney-General specifies in the notice under subsection (2) must be a court with proceeds jurisdiction in a State or Territory in which the property, or some or all of the property, is reasonably suspected of being located.

156 Registration of order

(1) If the DPP applies to a court for registration of an order in accordance with an authorisation under section 155, the court must register the order.

(2) The DPP must give notice of the application:

(a) to specified persons who the DPP has reason to suspect may have an interest in the property; and

(b) to such other persons as the court directs.

(3) However, the court must consider the application without notice having been given if the DPP requests the court to do so.

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

(5) Subject to subsection (6), a faxed copy of an authenticated copy of an order is, for the purposes of subsection (4), taken to be the same as the authenticated copy.

(6) A registration effected by registering a faxed copy of an authenticated copy of a forfeiture order ceases to have effect after 21 days unless the authenticated copy has been filed by then in the court that registered the order.

157 Effect of order

(1) A forfeiture order registered in a court has effect, and may be enforced, as if it were an order made by the court under the Proceeds of Crime Act at the time of registration.

(2) In particular, section 68 of that Act applies in relation to the forfeiture order as if:

(a) the reference in subparagraph 68(1)(b)(i) of that Act to the DPP having applied for the order were a reference to the DPP having applied for registration of the order under section 156 of this Act; and

(b) subparagraph 68(1)(b)(ii) of that Act were omitted.

(3) Subject to subsection (4) and to section 158, property that is subject to a forfeiture order registered under this Part may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised in writing by the Attorney-General for the purposes of this subsection.

(4) In giving a direction under subsection (3), the Attorney-General or authorised person must consider any order by the ICC for the property that is subject to the forfeiture order to be transferred to the ICC Trust Fund.

(5) Sections 69 and 70, Divisions 5 to 7 of Part 2-2, Part 4-2 and sections 322 and 323 of the Proceeds of Crime Act do not apply in relation to an order registered under this Part.

158 Effect on third parties of registration of forfeiture order

Applications by third parties

(1) If a court registers under section 156 a forfeiture order in relation to property, a person who:

(a) claims an interest in the property; and

(b) was not convicted of a crime within the jurisdiction of the ICC to which the order relates;

may apply to the court for an order under subsection (2).

Orders by the court

(2) If, on an application for an order under this subsection, the court is satisfied that:

(a) the applicant was not, in any way, involved in the commission of a crime within the jurisdiction of the ICC to which the order relates; and

(b) if the applicant acquired the interest in the property at the time of or after the commission of such a crime—the property was not proceeds of such a crime;

the court must make an order:

(c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest in the property; and

(d) either:

(i) directing the Commonwealth to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

Certain people need leave to apply

(3) A person who was given notice of, or appeared at, the hearing held in connection with the making of the order is not entitled to apply under subsection (1) unless the court gives leave.

(4) The court may grant leave if it is satisfied that there are special grounds for doing so.

(5) Without limiting subsection (4), the court may grant a person leave if the court is satisfied that:

(a) the person, for a good reason, did not attend the hearing referred to in subsection (3) although the person had notice of the hearing; or

(b) particular evidence that the person proposes to adduce in connection with the proposed application under subsection (1) was not available to the person at the time of the hearing referred to in subsection (3).

Period for applying

(6) Unless the court gives leave, an application under subsection (1) is to be made before the end of 6 weeks beginning on the day when the order is registered in the court.

(7) The court may give leave to apply outside that period if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the person's part.

Procedural matters

(8) A person who applies under subsection (1) must give to the DPP notice, as prescribed, of the application.

(9) The DPP is to be a party to proceedings on an application under subsection (1). The Attorney-General may intervene in such proceedings.

159 Forfeiture may be treated as pecuniary penalty order

(1) This section applies if the Attorney-General is unable to give effect to a forfeiture order.

(2) The Attorney-General must take measures to recover:

(a) the value specified by the International Criminal Court to be the value of the property ordered by that Court to be forfeited; or

(b) if the International Criminal Court has not specified the value of the property ordered by that Court to be forfeited—the value that, in the Attorney-General's opinion, is the value of that property.

(3) The forfeiture order is taken, for the purposes of the Proceeds of Crime Act, to be a pecuniary penalty order for an amount equal to the value referred to in subsection (2) and may be enforced as if it were a pecuniary penalty order made by the court in which the forfeiture order was registered.

(4) Division 4 of Part 2-4 of the Proceeds of Crime Act applies to the enforcement of the forfeiture order as a pecuniary penalty order as if:

(a) references in that Division to indictable offences or serious offences were references to crimes within the jurisdiction of the ICC; and

(b) the reference in paragraph 142(2)(a) of that Act to the order being discharged under Division 5 were a reference to the conviction being quashed by the ICC; and

(c) subsections 140(3) and (5) of that Act were omitted.

Part 12—Enforcement in Australia of sentences imposed by ICC

Division 1—Preliminary

160 Australia may agree to act as State of enforcement

(1) The Attorney-General may notify the ICC that Australia is willing to allow persons who are ICC prisoners to serve their sentences in Australia subject to such conditions (the ***enforcement conditions***) as Australia imposes and are specified in the instrument of notification.

(2) The enforcement conditions that may be imposed include, but are not limited to:

(a) a condition that, unless the Attorney-General determines that it is not necessary in a particular case, the ICC prisoner or his or her representative has consented in writing to the sentence being served in Australia; and

(b) a condition that the appropriate Ministerial consent has been given to the sentence being served in Australia; and

(c) a condition that any appeal or application for revision in respect of the sentence or in respect of the conviction on which it is based has been heard and determined or the period for bringing such an appeal or application has expired; and

(d) a condition that:

(i) on the day of receipt by Australia of the relevant designation under article 103 of the Statute, at least 6 months of the ICC prisoner's sentence remains to be served; or

(ii) if a shorter period remains to be served on that day, the Attorney-General has determined that, in the circumstances, transfer of the ICC prisoner to Australia for a shorter period is acceptable.

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

161 Withdrawal of agreement to act as State of enforcement

(1) If the Attorney-General notifies the ICC under section 160, the Attorney-General may, at any time, withdraw the notification by notifying the ICC that Australia is no longer willing to allow ICC prisoners to serve their sentences in Australia.

(2) Any notification given under subsection (1) does not affect the enforcement of sentences for which the Attorney-General had, before the notification was given, accepted the designation given to Australia by the ICC under section 164.

162 Designation of Australia as place for service of sentence

(1) If:

(a) the Attorney-General has given a notification under section 160 and has not withdrawn the notification under section 161; and

(b) the ICC imposes a sentence of imprisonment on a person convicted of a crime within the jurisdiction of the ICC; and

(c) the ICC designates Australia, under article 103 of the Statute, as the country in which the sentence is to be served;

the Attorney-General is to consider whether to accept the designation.

(2) Before accepting the designation, the Attorney-General may request the ICC to provide the Attorney-General with any relevant information that will enable the Attorney-General to assess whether the designation should be accepted.

163 Governmental consent to acceptance of designation

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

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

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

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

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

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

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

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

Note: An ICC prisoner may be transferred from the prison, hospital or other place in the State in which he or she begins to serve a sentence of imprisonment to another prison, hospital or other place in the State or to a prison, hospital or other place in another State (see paragraphs 172(5)(c), (d) and (h)).

164 Acceptance of designation

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

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

(b) in the case of a prisoner who is not an Australian citizen—the Minister administering the *Migration Act 1958* has consented to the sentence of imprisonment being served by the ICC prisoner in Australia; and

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

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

Division 2—Transfer to Australia of ICC prisoners

165 Issue of warrant for transfer to Australia

The Attorney-General may issue a warrant, by writing in the statutory form, for the transfer of an ICC prisoner to Australia if:

(a) the ICC's agreement to the enforcement conditions; and

(b) the written consent of the prisoner or his or her representative to the sentence being served in Australia (if the Attorney-General considers such consent is necessary); and

(c) the appropriate Ministerial consent to the sentence being served in Australia;

have been obtained.

166 Warrants for transfer to Australia

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

(2) A warrant must:

(a) specify the name and date of birth of the prisoner to be transferred; and

(b) specify the country from which the prisoner is to be transferred; and

(c) state that:

(i) the ICC's agreement to the enforcement conditions; and

(ii) the written consent of the prisoner or his or her representative to the sentence being served in Australia (if the Attorney-General considers such consent is necessary); and

(iii) the appropriate Ministerial consent to the sentence being served in Australia;

have been obtained.

(3) The warrant is:

(a) to authorise an escort officer to collect the prisoner from a place (whether in Australia or a foreign country) specified in the warrant; and

(b) if the place is in a foreign country—to authorise:

(i) the escort officer to transport the prisoner in custody to Australia for surrender to a person appointed by the Attorney-General to receive the prisoner; and

(ii) if appropriate, the appointed person to escort the prisoner to the prison, or hospital or other place, in Australia where the prisoner is to begin to serve the sentence of imprisonment in accordance with this Part; and

(c) if the place is in Australia—to authorise the escort officer to escort the prisoner to the prison, or hospital or other place, in Australia where the prisoner is to begin to serve the sentence of imprisonment in accordance with this Part; and

(d) if the prisoner is to be escorted to a prison—to require the superintendent of the prison to take the prisoner into custody to be dealt with in accordance with this Part; and

(e) if the prisoner is to be escorted to a hospital or other place—to authorise his or her detention in the hospital or place to be dealt with in accordance with this Part.

Note: An ICC prisoner may be transferred from the prison, hospital or other place in the State in which he or she begins to serve a sentence of imprisonment to another prison, hospital or other place in the State or to a prison, hospital or other place in another State (see paragraphs 172(5)(e), (d) and (h)).

(4) The Attorney-General may give any direction or approval that is necessary to ensure that the warrant is executed in accordance with its terms.

167 Cancellation of warrant

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

(2) Without limiting the grounds on which the Attorney-General may cancel a warrant for the transfer of an ICC prisoner to Australia, it must be cancelled if:

(a) the ICC cancels the designation of Australia or decides not to accept an enforcement condition; or

(b) the Attorney-General, the Minister administering the *Migration Act 1958* or a State Minister withdraws consent; or

(c) where the consent of the prisoner or his or her representative to the sentence being served in Australia was required by the Attorney-General—the prisoner or representative withdraws consent.

Division 3—Enforcement of sentences

168 Sentence enforcement in Australia

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

169 Duration and nature of enforced sentence

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

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

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

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

170 Directions about enforcement of sentence

(1) The Attorney-General may, subject to section 169, give such directions as the Attorney-General considers appropriate as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under this Part.

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

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

(4) For the purpose of forming an opinion or exercising a discretion under this section, the Attorney-General may inform himself or herself as he or she thinks fit and, in particular, may have regard to the following:

(a) any relevant decisions of the ICC;

(b) any views expressed by any State Minister concerned with the proposed transfer;

(c) any views expressed by prison authorities of any State;

(d) the legal nature of the sentence of imprisonment that might have been imposed if the acts or omissions constituting the crime within the jurisdiction of the ICC had been committed in Australia;

(e) any limitations or requirements arising under the Statute in relation to the way in which a sentence of imprisonment imposed by the ICC may be enforced in Australia.

171 No appeal or review of sentence of imprisonment imposed by ICC or of sentence enforcement decisions of Attorney-General

(1) On transfer of an ICC prisoner to Australia under this Part, no appeal or review lies in Australia against the sentence of imprisonment imposed by the ICC.

(2) No appeal or review lies against a decision of the Attorney-General about the enforcement in Australia under this Part of a sentence of imprisonment imposed by the ICC.

172 ICC prisoner transferred to Australia to be regarded as a federal prisoner

(1) For the purpose of enforcement in Australia of a sentence of imprisonment by the ICC, on transfer of the ICC prisoner to Australia under this Part:

(a) the sentence is taken to be a federal sentence of imprisonment; and

(b) the prisoner is taken to be a federal prisoner.

(2) Any period of the sentence of imprisonment as originally imposed by the ICC that was served by the ICC prisoner before the transfer is taken to have been served under the sentence of imprisonment as it is enforced under this Part.

(3) An ICC prisoner who is transferred to Australia under this Part may, while serving a sentence of imprisonment imposed by the ICC that is enforced under this Part, be detained in a prison, or in a hospital or other place, in a State.

(4) Subject to subsection (6), any relevant Australian law, or practice or procedure lawfully observed, about the detention of prisoners applies in relation to the ICC prisoner on or after his or her transfer to Australia to the extent that it is capable of applying concurrently with this Part.

(5) Without limiting subsection (4), Australian law, and practice and procedure, relating to the following matters are applicable to an ICC prisoner who is transferred to Australia under this Part:

(a) conditions of imprisonment and treatment of prisoners;

(b) classification and separation of prisoners;

(c) removal of prisoners from one prison to another;

(d) removal of prisoners between prisons and hospitals or other places or between one hospital or other place and another;

(e) treatment of mentally impaired prisoners;

(f) subject to subsection (6), eligibility for participation in prison programs;

(g) temporary absence from prison (for example, to work or seek work, to attend a funeral or visit a relative suffering a serious illness or to attend a place of education or training);

(h) transfer of prisoners between States.

(6) Australian law, and practice and procedure, relating to release of prisoners on parole or release under a pre-release permit scheme (however called) are not applicable to an ICC prisoner who is transferred to Australia under this Part.

173 Other matters relating to ICC prisoners

(1) An ICC prisoner has the right to communicate on a confidential basis with the ICC, without impediment from any person.

(2) A Judge of the ICC or a member of the staff of the ICC may visit an ICC prisoner for the purpose of hearing any representations by the prisoner without the presence of any other person except a representative of the prisoner.

(3) The Attorney-General must advise the ICC if an ICC prisoner is transferred from a prison to a hospital or other place, or from a hospital or other place to another hospital or other place.

174 Pardon, amnesty or commutation of sentences of imprisonment imposed on ICC prisoners transferred to Australia

(1) Subject to the prior agreement of the ICC, during the period in which a sentence of imprisonment is served in Australia by an ICC prisoner transferred to Australia under this Part, the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Australian law if the sentence of imprisonment had been imposed for an offence against an Australian law.

(2) The Attorney-General is to direct, by written notice in the statutory form, that an ICC prisoner must not be detained in custody or otherwise be subjected to detention or supervision in Australia under a sentence of imprisonment imposed by the ICC and enforced under this Part if, during the period in which the sentence is served in Australia:

(a) the ICC notifies the Attorney-General that the ICC prisoner may be pardoned or granted amnesty or commutation of sentence of imprisonment under an Australian law and the ICC prisoner is so pardoned or granted such amnesty or commutation of sentence of imprisonment; or

(b) the ICC notifies the Attorney-General that the ICC prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted commutation of sentence of imprisonment by the ICC.

175 ICC prisoner may apply to be transferred from Australia to a foreign country

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

176 How ICC prisoner is to be transferred

(1) This section applies if an ICC prisoner is to be transferred from Australia to a foreign country to complete the service of his or her sentence.

(2) The Attorney-General may issue a warrant, by writing in the statutory form, for the transfer of the prisoner.

(3) The warrant authorises the transfer of the prisoner from Australia to the foreign country to complete the service of his or her sentence.

(4) The warrant must:

(a) specify the name and date of birth of the prisoner; and

(b) state that the prisoner is to be transferred from Australia to the foreign country to complete the service of his or her sentence; and

(c) authorise an escort officer to collect the prisoner from the prison in which he or she is held in custody, or from the hospital or other place where he or she is detained, and transport the prisoner in custody to the foreign country; and

(d) require the superintendent of the prison, or the person in charge of the hospital or other place, to release the prisoner into the custody of the escort officer.

177 Special rules in certain cases

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

(a) be extradited to a foreign country in accordance with the *Extradition Act 1988* either:

(i) after the completion of, or release from, the sentence; or

(ii) during the sentence, but only for a temporary period; or

(b) be required to remain in Australia in order to serve a sentence that he or she is liable to serve under Australian law.

(2) Despite subsection (1):

(a) a person to whom paragraph (1)(a) applies may not, without the prior agreement of the ICC, be extradited to a foreign country; and

(b) a person to whom paragraph (1)(b) applies may not, without the prior agreement of the ICC, be prosecuted or punished in Australia;

for an offence constituted by an act or omission that occurred before the making of the relevant designation referred to in paragraph 162(1)(c).

(3) Subsection (2) does not apply to a person who:

(a) remains voluntarily in Australia for more than 30 days after the date of completion of, or release from, the sentence imposed by the ICC; or

(b) voluntarily returns to Australia after having left it.

178 Extradition of escaped ICC prisoner

(1) If:

(a) an ICC prisoner serving a sentence in a foreign country escapes from custody and is located in Australia; and

(b) the foreign country makes a request to Australia for the person's surrender in accordance with article 111 of the Statute;

the *Extradition Act 1988* applies to the request:

(c) subject to necessary limitations, conditions, exceptions or qualifications; and

(d) as if the request related to a person who had been convicted of an extradition offence (within the meaning of that Act).

(2) If:

(a) an ICC prisoner serving a sentence in Australia escapes from custody and is located in a foreign country; and

(b) the Attorney-General wishes to make a request to that country for the person's surrender in accordance with article 111 of the Statute;

the Attorney-General may request the person's extradition under the *Extradition Act 1988*, and that Act applies:

(c) with any necessary limitations, conditions, exceptions or qualifications; and

(d) as if the request related to a person who had been convicted of an extradition offence (within the meaning of that Act).

Part 13—Requests by Australia to ICC

179 Application of Part

This Part applies where:

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

(b) a prosecution has been instituted in Australia;

in respect of conduct that is a crime within the jurisdiction of the ICC or is an indictable offence against Australian law.

180 Request by Attorney-General

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

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

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

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

Part 14—Miscellaneous

181 Attorney-General's decisions in relation to certificates to be final

(1) Subject to any jurisdiction of the High Court under the Constitution, a decision by the Attorney-General to issue, or to refuse to issue, a certificate under section 22 or 29:

(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 certificate that has been issued;

(b) a decision to impose a condition or restriction in connection with the issue of, or a refusal to issue, a certificate or to remove a condition or restriction so imposed;

(c) a decision to do anything preparatory to the making of a decision to issue, or to refuse to issue, a certificate 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 issue, or to refuse to issue, a certificate or a decision referred to in paragraph (a), (b) or (c);

(e) a failure or refusal to make a decision whether or not to issue a certificate 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.

182 Arrest of persons escaping from custody or contravening conditions of recognisances

(1) A police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person has escaped from custody authorised by this Act.

(2) A police officer may, without warrant, arrest a person who has been released on bail under this Act if the police officer has reasonable grounds for believing that the person has contravened, or is about to contravene, a term or condition of a recognisance on which bail was granted to the person.

(3) A police officer who arrests a person under subsection (1) or (2) must, as soon as practicable, take the person before a magistrate.

(4) If the magistrate is satisfied that the person has escaped from custody authorised by this Act or has contravened, or is about to contravene, a term or condition of a recognisance, the magistrate may issue a warrant, by writing in the statutory form, authorising any police officer to return the person to the custody from which the person escaped, or was released on the recognisance, as the case may be.

183 Aiding persons to escape etc.

Sections 46, 47A and 48 of the *Crimes Act 1914* (other than paragraphs 46(1)(ab) and 47A(1)(d) of that Act) apply as if:

(a) references in those sections to custody in respect of any offence against a law of the Commonwealth were references to custody while in Australia pursuant to this Act; and

(b) references in those sections to arrest in respect of any offence against a law of the Commonwealth were references to arrest pursuant to this Act.

184 Cost of execution of requests

The Commonwealth is liable to pay any costs incurred in connection with dealing with a request for cooperation other than

costs that, under article 100 of the Statute, are to be borne by the ICC.

185 Legal assistance

(1) A person who:

(a) has instituted, or proposes to institute, a proceeding before a magistrate or a court under this Act or in respect of detention under this Act; or

(b) is, or will be, a party to such a proceeding; or

(c) is, or will be, giving evidence or producing documents or other articles at such a proceeding;

may apply to the Attorney-General for assistance under this section in respect of the proceeding.

(2) If the Attorney-General is satisfied that:

(a) it would involve hardship to the person to refuse the application; and

(b) in all the circumstances, it is reasonable that the application be granted;

the Attorney-General may authorise provision by the Commonwealth to the person of such legal or financial assistance in relation to the proceeding as the Attorney-General determines.

(3) The assistance may be granted unconditionally or subject to such conditions as the Attorney-General determines.

186 Arrangements with States

(1) The Governor-General may make arrangements with the Governor of a State with respect to the administration of this Act, including arrangements relating to the performance of functions or the exercise of powers under this Act by officers of the State.

(2) An arrangement may be varied or terminated at any time.

(3) The Attorney-General is to cause notice of the making, variation or termination of an arrangement to be published in the *Gazette*.

(4) The reference in subsection (1) to the Governor of a State is:

(a) in relation to the Australian Capital Territory—a reference to the Chief Minister for that Territory; or

(b) in relation to the Northern Territory—a reference to the Administrator of that Territory; or

(c) in relation to Norfolk Island—a reference to the Administrator of Norfolk Island.

187 Delegation

The Attorney-General may delegate in writing all or any of his or her powers and functions under this Act or the regulations, other than powers and functions under section 12 and Parts 3, 8 and 12 to:

(a) the Secretary of the Department; or

(b) an SES employee in the Department.

188 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may make provision for or in respect of information to be provided to ICC prisoners for the purposes of Part 12.

(3) The regulations may prescribe penalties not exceeding a fine of 10 penalty units for offences against the regulations.

189 Annual report

The Department must publish each year, as an appendix to the Department's Annual Report for that year, a report on the operation of this Act, the operations of the ICC, and the impact of the operations of the ICC on Australia's legal system.

Schedule 1—Rome Statute of the International Criminal Court

Note: See section 4

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

PREAMBLE

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court

in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows

PART 1. ESTABLISHMENT OF THE COURT

Article 1
The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2
Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3
Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4
Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5
Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6
Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or

whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8
War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any

kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced

sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific

experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9
Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11
Jurisdiction ratione temporis

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12
Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13
Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14
Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15
Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request

for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16
Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17
Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18
Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

Article 19
Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(c) A State from which acceptance of jurisdiction is required under article 12.

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).

5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20
Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21
Applicable law

1. The Court shall apply:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22
Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23
Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24
Non-retroactivity ratione personae

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.

2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25
Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26
Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27
Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court 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 such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That 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.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) 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.

Article 29
Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30
Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31
Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

(a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32
Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33
Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34
Organs of the Court

The Court shall be composed of the following organs:

(a) The Presidency;

(b) An Appeals Division, a Trial Division and a Pre-Trial Division;

(c) The Office of the Prosecutor;

(d) The Registry.

Article 35
Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36
Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.

(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 37
Judicial vacancies

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

Article 38
The Presidency

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.

2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:

(a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and

(b) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39

Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.

(b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;

(ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;

(iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence;

(c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.

(b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary

attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40
Independence of the judges

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41
Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be

entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42
The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.

6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.

(a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;

(b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;

9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 43
The Registry

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.

2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar.

5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44
Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45
Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46
Removal from office

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:

(a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or

(b) Is unable to exercise the functions required by this Statute.

2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:

(a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;

(b) In the case of the Prosecutor, by an absolute majority of the States Parties;

(c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47
Disciplinary measures

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48
Privileges and immunities

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:

(a) A judge or the Prosecutor may be waived by an absolute majority of the judges;

(b) The Registrar may be waived by the Presidency;

(c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;

(d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49
Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50
Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51
Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Rules of Procedure and Evidence may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority; or

(c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.

5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52
Regulations of the Court

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

Article 53
Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

(a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(b) The case is or would be admissible under article 17; and

(c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.

2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:

(a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;

(b) The case is inadmissible under article 17; or

(c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.

(b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on

paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-Trial Chamber.

4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54
Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:

(a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(a) In accordance with the provisions of Part 9; or

(b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).

3. The Prosecutor may:

(a) Collect and examine evidence;

(b) Request the presence of and question persons being investigated, victims and witnesses;

(c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

(e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and

(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55
Rights of persons during an investigation

1. In respect of an investigation under this Statute, a person:

(a) Shall not be compelled to incriminate himself or herself or to confess guilt;

(b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;

(c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and

(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

(b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

(c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and

(d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 56
Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.

(b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.

(c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1 (b) may include:

(a) Making recommendations or orders regarding procedures to be followed;

(b) Directing that a record be made of the proceedings;

(c) Appointing an expert to assist;

(d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been

designated, appointing another counsel to attend and represent the interests of the defence;

(e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;

(f) Taking such other action as may be necessary to collect or preserve evidence.

3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

Article 57
Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:

(a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;

(b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;

(c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;

(d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.

(e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

Article 58
Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(b) The arrest of the person appears necessary:

(i) To ensure the person's appearance at trial,

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

2. The application of the Prosecutor shall contain:

(a) The name of the person and any other relevant identifying information;

(b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;

(c) A concise statement of the facts which are alleged to constitute those crimes;

(d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and

(e) The reason why the Prosecutor believes that the arrest of the person is necessary.

3. The warrant of arrest shall contain:

(a) The name of the person and any other relevant identifying information;

(b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and

(c) A concise statement of the facts which are alleged to constitute those crimes.

4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:

(a) The name of the person and any other relevant identifying information;

(b) The specified date on which the person is to appear;

(c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and

(d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

Article 59
Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

(a) The warrant applies to that person;

(b) The person has been arrested in accordance with the proper process; and

(c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.

7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60
Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute, including the right to apply for interim release pending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth

in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

Article 61
Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.

2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:

(a) Waived his or her right to be present; or

(b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.

3. Within a reasonable time before the hearing, the person shall:

(a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and

(b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.

5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.

6. At the hearing, the person may:

(a) Object to the charges;

(b) Challenge the evidence presented by the Prosecutor; and

(c) Present evidence.

7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

(a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;

(b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;

(c) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conducting further investigation with respect to a particular charge; or

(ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.

9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.

11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

Article 62
Place of trial

Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63
Trial in the presence of the accused

1. The accused shall be present during the trial.

2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for

him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

Article 64
Functions and powers of the Trial Chamber

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:

(a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;

(b) Determine the language or languages to be used at trial; and

(c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.

4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.

5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.

6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:

(a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;

(b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;

(c) Provide for the protection of confidential information;

(d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;

(e) Provide for the protection of the accused, witnesses and victims; and

(f) Rule on any other relevant matters.

7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.

(b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:

(a) Rule on the admissibility or relevance of evidence; and

(b) Take all necessary steps to maintain order in the course of a hearing.

10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65
Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:

(a) The accused understands the nature and consequences of the admission of guilt;

(b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and

(c) The admission of guilt is supported by the facts of the case that are contained in:

(i) The charges brought by the Prosecutor and admitted by the accused;

(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and

(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:

(a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or

(b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the

admission of guilt as not having been made and may remit the case to another Trial Chamber.

5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66
Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67
Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(c) To be tried without undue delay;

(d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the

interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence; and

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide.

Article 68
Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes.

These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Article 69
Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.

2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.

3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.

6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.

7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

(a) The violation casts substantial doubt on the reliability of the evidence; or

(b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

Article 70
Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

(a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;

(b) Presenting evidence that the party knows is false or forged;

(c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

(e) Retaliating against an official of the Court on account of duties performed by that or another official;

(f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.

3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.

4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

(b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of

prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

Article 71
Sanctions for misconduct before the Court

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.

2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

Article 72
Protection of national security information

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.

2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.

3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.

4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.

5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

(a) Modification or clarification of the request;

(b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;

(c) Obtaining the information or evidence from a different source or in a different form; or

(d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:

(a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:

(i) The Court may, before making any conclusion referred to in subparagraph 7 (a) (ii), request further consultations for the

purpose of considering the State's representations, which may include, as appropriate, hearings in camera and ex parte;

(ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

(iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

(b) In all other circumstances:

(i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73
Third-party information or documents

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74
Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each

stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.

4. The deliberations of the Trial Chamber shall remain secret.

5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

Article 75
Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76
Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.

2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.

3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.

4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

Article 77
Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78
Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

Article 79
Trust Fund

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

Article 80
Non-prejudice to national application of penalties and national laws

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

Article 81
Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:

(a) The Prosecutor may make an appeal on any of the following grounds:

(i) Procedural error,

(ii) Error of fact, or

(iii) Error of law;

(b) The convicted person, or the Prosecutor on that person's behalf, may make an appeal on any of the following grounds:

(i) Procedural error,

(ii) Error of fact,

(iii) Error of law, or

(iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;

(b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;

(c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;

(b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;

(c) In case of an acquittal, the accused shall be released immediately, subject to the following:

(i) Under exceptional circumstances, and having regard, inter alia, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;

(ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.

4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 82
Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(a) A decision with respect to jurisdiction or admissibility;

(b) A decision granting or denying release of the person being investigated or prosecuted;

(c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;

(d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.

3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.

4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83
Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:

(a) Reverse or amend the decision or sentence; or

(b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

Article 84
Revision of conviction or sentence

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

(a) New evidence has been discovered that:

(i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

(ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

(b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

(c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious

misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(a) Reconvene the original Trial Chamber;

(b) Constitute a new Trial Chamber; or

(c) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgement should be revised.

Article 85
Compensation to an arrested or convicted person

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86
General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87
Requests for cooperation: general provisions

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

(b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

(b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

Article 88
Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

Article 89
Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of ne bis in idem as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

(i) A description of the person being transported;

(ii) A brief statement of the facts of the case and their legal characterization; and

(iii) The warrant for arrest and surrender;

(c) A person being transported shall be detained in custody during the period of transit;

(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

(e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90
Competing requests

1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.

2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:

(a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.

3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.

5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine

whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:

(a) The respective dates of the requests;

(b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and

(c) The possibility of subsequent surrender between the Court and the requesting State.

7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:

(a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;

(b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.

8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

Article 91
Contents of request for arrest and surrender

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:

(a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(b) A copy of the warrant of arrest; and

(c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.

3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:

(a) A copy of any warrant of arrest for that person;

(b) A copy of the judgement of conviction;

(c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and

(d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.

4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

Article 92
Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.

2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:

(a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;

(b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;

(c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and

(d) A statement that a request for surrender of the person sought will follow.

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93
Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:

(a) The identification and whereabouts of persons or the location of items;

(b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;

(c) The questioning of any person being investigated or prosecuted;

(d) The service of documents, including judicial documents;

(e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;

(f) The temporary transfer of persons as provided in paragraph 7;

(g) The examination of places or sites, including the exhumation and examination of grave sites;

(h) The execution of searches and seizures;

(i) The provision of records and documents, including official records and documents;

(j) The protection of victims and witnesses and the preservation of evidence;

(k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and

(l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.

2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.

3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.

4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.

5. Before denying a request for assistance under paragraph 1 (l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.

6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.

7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:

(i) The person freely gives his or her informed consent to the transfer; and

(ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.

8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.

(b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

(c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the

Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and
b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (b) (i) a:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;
b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

Article 94
Postponement of execution of a request in respect of ongoing investigation or prosecution

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measures to preserve evidence, pursuant to article 93, paragraph 1 (j).

Article 95
Postponement of execution of a request in respect of an admissibility challenge

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

Article 96
Contents of request for other forms of assistance under article 93

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. The request shall, as applicable, contain or be supported by the following:

(a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

(b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

(c) A concise statement of the essential facts underlying the request;

(d) The reasons for and details of any procedure or requirement to be followed;

(e) Such information as may be required under the law of the requested State in order to execute the request; and

(f) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

Article 97
Consultations

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:

(a) Insufficient information to execute the request;

(b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or

(c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98
Cooperation with respect to waiver of immunity
and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99
Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.

2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.

3. Replies from the requested State shall be transmitted in their original language and form.

4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:

(a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may

directly execute such request following all possible consultations with the requested State Party;

(b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.

5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

Article 100
Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:

(a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;

(b) Costs of translation, interpretation and transcription;

(c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;

(d) Costs of any expert opinion or report requested by the Court;

(e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and

(f) Following consultations, any extraordinary costs that may result from the execution of a request.

2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101

Rule of speciality

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.

2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102
Use of terms

For the purposes of this Statute:

(a) "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute.

(b) "extradition" means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

Article 103
Role of States in enforcement of sentences of imprisonment

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.

(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.

(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.

2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.

(b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.

3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:

(a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;

(b) The application of widely accepted international treaty standards governing the treatment of prisoners;

(c) The views of the sentenced person;

(d) The nationality of the sentenced person;

(e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.

4. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104
Change in designation of State of enforcement

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.

2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

Article 105
Enforcement of the sentence

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.

2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

Article 106
Supervision of enforcement of sentences and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 107
Transfer of the person upon completion of sentence

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.

2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.

3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 108
Limitation on the prosecution or punishment of other offences

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.

2. The Court shall decide the matter after having heard the views of the sentenced person.

3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 109
Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.

2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.

3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

Article 110
Review by the Court concerning reduction of sentence

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.

3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.

4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

(a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;

(b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

(c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.

5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

Article 111
Escape

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or multilateral arrangements, or may request that the Court

seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designated by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

Article 112
Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.

2. The Assembly shall:

(a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;

(b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;

(c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;

(d) Consider and decide the budget for the Court;

(e) Decide whether to alter, in accordance with article 36, the number of judges;

(f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;

(g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.

3. (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.

(b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

(c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.

4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.

5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.

6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.

7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:

(a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;

(b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.

8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

9. The Assembly shall adopt its own rules of procedure.

10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

Article 113
Financial Regulations

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114
Payment of expenses

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115
Funds of the Court and of the Assembly of States Parties

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:

(a) Assessed contributions made by States Parties;

(b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116
Voluntary contributions

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117
Assessment of contributions

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations

for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118
Annual audit

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13. FINAL CLAUSES

Article 119
Settlement of disputes

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.

2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Article 120
Reservations

No reservations may be made to this Statute.

Article 121
Amendments

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.

2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may

deal with the proposal directly or convene a Review Conference if the issue involved so warrants.

3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.

4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.

5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.

6. If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.

7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122
Amendments to provisions of an institutional nature

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations or such other person designated by the

Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.

2 Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123
Review of the Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.

3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124
Transitional Provision

Notwithstanding article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125

Signature, ratification, acceptance, approval or accession

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 126
Entry into force

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 127
Withdrawal

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal

shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 128
Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.

[*Minister's second reading speech made in—*
House of Representatives on 25 June 2002
Senate on 26 June 2002]

(157/02)