



Mutual Assistance in Criminal Matters Act 1987

No. 85, 1987

Compilation No. 38

Compilation date:	9 December 2018
Includes amendments up to:	Act No. 148, 2018
Registered:	13 December 2018

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Mutual Assistance in Criminal Matters Act 1987* that shows the text of the law as amended and in force on 9 December 2018 (the *compilation date*).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary	1
1 Short title.....	1
2 Commencement.....	1
3 Interpretation.....	1
4 Act to extend to external Territories.....	15
4A Application of the <i>Criminal Code</i>	15
5 Objects of the Act.....	15
6 Act not to limit other provision etc. of assistance.....	15
7 Application of Act.....	16
8 Refusal of assistance.....	16
9 Assistance may be provided subject to conditions.....	19
10 Request by Australia.....	19
11 Request by foreign country.....	19
Part II—Assistance in relation to taking of evidence and production of documents or other articles	21
Division 1—Requests by Australia	21
12 Requests by Australia.....	21
Division 2—Requests by foreign countries	23
13 Requests by foreign countries for the taking of evidence or the production of documents.....	23
13AA Enforcement of orders.....	26
13AB Commonwealth and State and Territory laws apply in relation to taking evidence and producing documents etc.	27
13A Requests by foreign countries for provision of material lawfully obtained.....	28
Part III—Assistance in relation to search and seizure	31
14 Requests by Australia for search and seizure.....	31
15 Requests by foreign countries for search and seizure—action by Attorney-General.....	32
Part IIIA—Assistance in relation to stored communications	33
15B Requests by foreign countries for stored communications.....	33
Part IIIBA—Assistance in relation to use of surveillance devices	34
15C Requests by Australia for surveillance devices.....	34

15CA	Requests by foreign countries for surveillance devices	35
Part IIIBB—Assistance in relation to data held in computers		36
15CB	Simplified outline of this Part.....	36
15CC	Requests by foreign countries for assistance in relation to data held in computers.....	36
Part IIIB—Assistance in relation to telecommunications data		38
15D	Requests by foreign countries for telecommunications data.....	38
Part IV—Arrangements for persons to give evidence or assist investigations		39
Division 1—Requests by Australia		39
16	Requests for removal of certain persons to Australia	39
17	Arrangements between Attorney-General and State Ministers in relation to custody of certain persons	40
18	Custody of certain persons	40
19	Immunities.....	40
20	Status of person prosecuted for offence committed after departure from foreign country.....	42
21	Limitation on use of evidence or assistance given by certain persons.....	43
22	Conditions of imprisonment	44
23	Release of certain persons upon request by foreign country.....	44
25	Arrest of person who has escaped from custody.....	44
25A	Aiding persons to escape etc.....	45
Division 2—Requests by foreign countries		46
26	Requests for giving of evidence at hearings in foreign countries	46
27	Requests for assistance in relation to investigations in foreign countries.....	49
28	Effect of removal to foreign country on prisoner’s term of imprisonment.....	53
Part IVA—Forensic procedures		54
Division 1—Requests by Australia		54
28A	Requests by Australia for forensic procedures	54
Division 2—Requests by foreign countries		56
28B	Requests by foreign countries for forensic procedures	56
28C	Providing forensic evidence to foreign countries	57

Part V—Custody of persons in transit	58
29 Transit.....	58
31 Arrest of person in transit.....	58
31A Aiding persons to escape etc.....	59
Part VI—Proceeds of crime	60
Division 1—Requests by Australia	60
32 Requests for enforcement of orders.....	60
33 Requests for issue of orders in foreign countries.....	60
Division 2—Requests by foreign countries	61
Subdivision A—Enforcement of foreign orders	61
33A Object of Subdivision.....	61
34 Requests for enforcement of foreign orders.....	61
34A Registration of foreign orders.....	62
34B Enforcement of foreign forfeiture orders.....	63
34C Effect on third parties of registration of foreign forfeiture orders.....	64
34D Enforcement of foreign pecuniary penalty orders.....	66
34E Enforcement of foreign restraining orders.....	67
34F Copies of foreign orders sent by fax, email or other electronic means.....	68
34G Cancelling registration.....	68
34H Certain provisions of the Proceeds of Crime Act not to apply.....	69
Subdivision B—Restraining orders relating to foreign criminal proceedings	69
34J Requests for restraining orders.....	69
34K Applying for and making restraining orders.....	69
34L Excluding property from restraining orders.....	70
34M Cessation of restraining orders.....	71
Subdivision C—Production orders relating to foreign serious offences	72
34P Applying for and making production orders.....	72
34Q Retaining produced documents.....	72
Subdivision D—Notices to financial institutions	72
34R Giving notices to financial institutions.....	72
34S Contents of notices to financial institutions.....	73
34T Protection from suits etc. for those complying with notices.....	74
34U Making false statements in applications.....	74

34V	Disclosing existence or nature of notice	75
34W	Failing to comply with a notice	75
Subdivision E—Monitoring orders relating to foreign serious offences		76
34Y	Applying for and making monitoring orders	76
34Z	Passing on information given under monitoring orders	77
Subdivision F—Search warrants relating to foreign serious offences		77
34ZB	Applying for and issuing search warrants	77
34ZC	Contents of POCA search warrants	78
34ZCA	Seizure of certain property or things found in the course of search.....	79
34ZD	Return of seized property to third parties	79
34ZE	Dealing with certain seized property	80
34ZF	Dealing with evidential material and certain property or things seized under POCA search warrants	82
Subdivision G—Authorisation of authorised officers		83
34ZG	Attorney-General may authorise authorised officers	83
Division 3—Provisions relating to registered foreign restraining orders		84
35	Court may order Official Trustee to take custody and control of property	84
35A	Procedural matters	84
35B	Ancillary orders	85
35C	Dealing with restrained property	85
35D	Money not to be paid into the Common Investment Fund.....	85
35E	Undertakings	86
35F	Order to discharge certain registered foreign pecuniary penalty orders	86
35G	Official Trustee to carry out orders.....	87
35H	Discharge of person’s liability under foreign pecuniary penalty order.....	88
35J	Creation of charge on property	88
35K	When the charge ceases to have effect	89
35L	Registering charges	90
35M	When order ceases to be in force	91

Part VIIA—Search, seizure and powers of arrest	92
Division 1—General	92
38A Object of Part.....	92
Division 2—Issue of search warrants	93
38B Application for search warrant	93
38C When search warrants may be issued	94
38D Content of warrants	95
38E The things authorised by a search warrant in relation to premises.....	97
38F The things authorised by a search warrant in relation to a person	98
38G Restrictions on personal searches	99
38H Warrants may be issued by telephone etc.	99
38I Formalities relating to warrants issued by telephone etc.	100
Division 3—Execution of search warrants	102
38J Availability of assistance and use of force in executing a warrant.....	102
38K Copy of warrant to be shown to occupier etc.....	102
38L Specific powers available to officers executing warrants	103
38M Use of equipment to examine or process things	103
38N Use of electronic equipment at premises	104
38O Compensation for damage to electronic equipment.....	106
38P Copies of seized things to be provided	107
38Q Occupier entitled to watch search	107
38R Receipts for things seized under warrant etc.	108
Division 4—Arrest and related matters	109
38S Power to enter premises to arrest person	109
38T Use of force in making arrest.....	109
38U Persons to be informed of grounds of arrest	110
38V Power to search an arrested person.....	110
Division 5—General	112
38W Conduct of ordinary searches and frisk searches	112
38X Announcement before entry	112
38Y Offence for making false statements in warrants.....	112
38Z Offences relating to telephone warrants	113
38ZA Retention of things seized.....	113
38ZB Arrest of person released on bail	114

Part VIII—Miscellaneous	115
38ZC Federal Circuit Court Judges—consent to nomination	115
38ZD Magistrates and Federal Circuit Court Judges—personal capacity.....	115
39 Arrangements with Governors of States	115
39A Requests by Attorney-General on behalf of a defendant	116
39B Certificate by Attorney-General if foreign country refuses request made under section 39A	118
40 Delegation	118
41 Jurisdiction of courts	118
42 Evidence	118
43 Authentication of documents	118
43A Admissibility of certain documents—requests under the Money-Laundering Convention.....	119
43B Restriction on use of information etc	119
43C Requests for international assistance not to be disclosed.....	120
43D Collection, use or disclosure of personal information for international assistance purposes—the <i>Privacy Act 1988</i>	121
44 Regulations.....	121
Endnotes	122
Endnote 1—About the endnotes	122
Endnote 2—Abbreviation key	124
Endnote 3—Legislation history	125
Endnote 4—Amendment history	130
Endnote 5—Editorial changes	138

An Act relating to the provision and obtaining of international assistance in criminal matters

Part I—Preliminary

1 Short title

This Act may be cited as the *Mutual Assistance in Criminal Matters Act 1987*.

2 Commencement

- (1) Section 1 and this section shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a day or days fixed by Proclamation.

3 Interpretation

- (1) 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.

ancillary offence, in relation to an offence (in this definition called the *main offence*), means:

- (a) an offence of conspiring to commit the main offence; or
- (b) an offence of aiding, abetting, inciting, counselling or procuring, or being in any way knowingly concerned in, the commission of the main offence; or
- (c) an offence of receiving or assisting another person in order to enable the person to escape punishment for, or to dispose of the proceeds of, the main offence; or
- (d) an offence of attempting to commit the main offence.

Section 3

approved form means a form approved by the Attorney-General in writing for the purposes of the provision in which the expression occurs.

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

Australian forfeiture order means:

- (a) a forfeiture order within the meaning of a proceeds of crime law; or
- (aa) a declaration made under section 95 of the Proceeds of Crime Act; or
- (ab) a declaration made under subsection 30(8A) of the *Proceeds of Crime Act 1987*; or
- (b) an interstate forfeiture order within the meaning of the Proceeds of Crime Act; or
- (c) an order or declaration, made under Australian law, that:
 - (i) orders the forfeiture of property in respect of an offence against Australian law or declares that property has been forfeited in respect of an offence against Australian law; and
 - (ii) is, in accordance with the regulations, to be taken to be an Australian forfeiture order for the purposes of this Act.

Australian law means the laws of the Commonwealth, the States and the Territories.

Australian literary proceeds order means:

- (a) a literary proceeds order within the meaning of the Proceeds of Crime Act; or
- (b) an order, made under Australian law, that:
 - (i) imposes a pecuniary penalty on a person in respect of an offence against Australian law; and
 - (ii) is, in accordance with the regulations, to be taken to be an Australian literary proceeds order for the purposes of this Act.

Australian pecuniary penalty order means:

- (a) a pecuniary penalty order within the meaning of a proceeds of crime law; or
- (b) an interstate pecuniary penalty order within the meaning of the Proceeds of Crime Act; or
- (c) an order, made under Australian law, that:
 - (i) imposes a pecuniary penalty on a person in respect of an offence against Australian law; and
 - (ii) is, in accordance with the regulations, to be taken to be an Australian pecuniary penalty order for the purposes of this Act.

Australian restraining order means:

- (a) a restraining order within the meaning of a proceeds of crime law (other than a restraining order made by virtue of section 59 of the *Proceeds of Crime Act 1987* or section 34K of this Act); or
- (b) an interstate restraining order within the meaning of the Proceeds of Crime Act; or
- (c) an order, made under Australian law, that:
 - (i) restrains a particular person, or all persons, from dealing with property; and
 - (ii) is, in accordance with the regulations, to be taken to be an Australian restraining order for the purposes of this Act.

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

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

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

cartel offence means an offence by a corporation involving cartel conduct.

Section 3

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

committal proceeding, in relation to a foreign offence, includes:

- (a) any proceeding to determine whether a person should be tried for the offence (whether or not a particular person is specified at the commencement of that proceeding as the person in relation to whom the determination is to be made); and
- (b) a proceeding that is, in accordance with the regulations, to be taken to be a committal proceeding for the purposes of this Act.

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

Confiscated Assets Account means the account established under section 295 of the Proceeds of Crime Act.

criminal investigation means an investigation into an offence (whether the offence is believed to have been committed, to be being committed or to be likely to be committed).

criminal matter includes:

- (a) a criminal matter relating to revenue (including taxation and customs duties);
- (b) a criminal matter relating to foreign exchange control;
- (c) a matter relating to the forfeiture or confiscation of property in respect of an offence;
- (d) a matter relating to the imposition or recovery of a pecuniary penalty in respect of an offence; and
- (e) a matter relating to the restraining of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed, in respect of an offence;

whether arising under Australian law or a law of a foreign country.

criminal proceeding, in relation to an offence, means a trial of a person for the offence or a committal proceeding in respect of the offence.

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

eligible Federal Circuit Court Judge means a Judge of the Federal Circuit Court of Australia in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force.

evidential material means:

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

executing officer, in relation to a warrant, means:

- (a) the police officer named in the warrant, by the Magistrate or eligible Federal Circuit Court Judge 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.

Section 3

federal prisoner means a person who is being held in custody pending trial for or sentence for, or is under a sentence of imprisonment for, an offence against 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 as in the Proceeds of Crime Act.

foreign confiscation proceedings means proceedings in a foreign country in respect of the making of a foreign forfeiture order or a foreign pecuniary penalty order.

foreign forfeiture order means:

- (a) an order, made under the law of a foreign country by a court or other judicial authority, for the forfeiture of property in respect of an offence against the law of that country; or
- (b) a declaration, direction, notice, decree or other decision (however described), made under the law of a foreign country by a court or other judicial authority, evidencing forfeiture of property under the law of that country.

foreign law immunity certificate means a certificate given, or a declaration made, by a foreign country or under a law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required:

- (a) to answer a specified question; or
- (b) to produce a specified document.

foreign offence means an offence against a law of a foreign country.

foreign order means:

- (a) a foreign forfeiture order; or
- (b) a foreign pecuniary penalty order; or
- (c) a foreign restraining order.

foreign pecuniary penalty order means an order, made under the law of a foreign country by a court or other judicial authority, imposing a pecuniary penalty in respect of an offence against the law of that country, but does not include an order for the payment of a sum of money by way of compensation, restitution or damages to an injured person.

foreign prisoner means a person who is being held in custody pending trial for or sentence for, or is under a sentence of imprisonment for, an offence against a law of a foreign country, but does not include a person who is at large after having escaped from lawful custody.

foreign restraining order means an order:

- (a) made under the law of a foreign country (whether or not by a court) in respect of an offence against the law of that country; and
- (b) which is, or purports to be, made for the purpose of preserving property (whether or not the order also purports to do other things) including an order:
 - (i) restraining a particular person or persons from dealing with the property; or
 - (ii) freezing the property; or
 - (iii) directing the seizure of the property; or
 - (iv) directing that the property be taken into official custody or control.

foreign serious offence means a serious offence against a law of a foreign country.

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

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

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

Section 3

frisk search means:

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

Governor means:

- (a) in relation to the Australian Capital Territory—the Chief Minister of the Territory; or
- (b) in relation to the Northern Territory—the Administrator of the Territory.

incapable person has the same meaning as in Part 1D of the *Crimes Act 1914*.

instrument, in relation to an offence, has the same meaning as in the Proceeds of Crime Act.

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

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

investigative proceeding means a proceeding covered by paragraph (a) or (b) of the definition of **proceeding**.

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

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

Magistrate means:

- (a) a Magistrate of a State (other than the Northern Territory) in respect of whom an arrangement under section 39 is in force; or
- (aa) a Judge, or an acting Judge, of the Local Court of the Northern Territory in respect of whom an arrangement under section 39 is in force; or

(c) a Magistrate of an external Territory.

Money-Laundering Convention means the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990.

money laundering offence, in relation to the proceeds of a serious offence, means an offence that is committed by a person:

- (a) engaging, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of the offence; or
- (b) receiving, possessing, concealing, disposing of or bringing into a country money, or other property, that is proceeds of the offence;

when the person knows that, or is reckless of whether or not, the money or other property is proceeds of a serious offence.

mutual assistance treaty means a treaty relating in whole or in part to the provision of assistance in criminal matters.

narcotic substance has the same meaning as in the Proceeds of Crime Act.

offence includes an offence against a law relating to taxation, customs duties or other revenue matters or relating to foreign exchange control.

offence under the ordinary criminal law of Australia means an offence against Australian law other than an offence under the military law of Australia.

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 who has been authorised by the relevant executing officer to assist in executing the warrant.

Section 3

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 headgear; and
- (b) an examination of those items.

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

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

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

police officer means a member or special member of the Australian Federal Police or a member of the police force of a State or Territory.

political offence has the same meaning as in the *Extradition Act 1988*, but does not include an offence constituted by conduct that, by a mutual assistance treaty (not being a bilateral treaty) in relation to the relevant country or any country, may be the subject of a request for mutual assistance, being an offence declared by regulations for the purposes of this paragraph not to be a political offence in relation to the country or all countries.

premises includes:

- (a) a structure, building or vehicle; and
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

prison includes a gaol, lock-up or other place of detention.

proceeding, in relation to a criminal matter, includes a proceeding before a judicial officer or a jury for the purpose of:

- (a) gathering evidential material that may lead to the laying of a criminal charge; or
- (b) assessing evidential material in support of the laying of a criminal charge.

proceeds, in relation to an offence, has the same meaning as in the Proceeds of Crime Act.

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

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

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

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

proceeds of crime law means:

- (a) the *Proceeds of Crime Act 2002*; or
- (b) the *Proceeds of Crime Act 1987*.

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

protected information means information that is protected information within the meaning of paragraph 44(1)(a), (aa), (b) or (c) of the *Surveillance Devices Act 2004*.

public authority of a foreign country means any authority or body constituted by or under a law of a foreign country.

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

related foreign serious offence: a foreign serious offence is a **related foreign serious offence** in relation to another foreign serious offence if the physical elements of the 2 offences are:

- (a) substantially the same acts or omissions; or

Section 3

(b) acts or omissions in a single series.

relevant investigation, in relation to a search warrant issued under Division 2 of Part VIIA, means the investigation to which the evidential material authorised to be searched and seized under the warrant relates.

relevant proceeding, in relation to a search warrant issued under Division 2 of Part VIIA, means the proceeding to which the evidential material authorised to be searched and seized under the warrant relates.

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

search warrant means a warrant issued under section 38C.

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

serious offence means an offence the maximum penalty for which is:

- (a) death; or
- (b) imprisonment for a period exceeding 12 months; or
- (c) a fine exceeding 300 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Paragraph (c)—see also subsection (1A) of this section.

State includes:

- (a) the Australian Capital Territory; and
- (b) the Northern Territory.

State Minister means:

- (a) in relation to a State other than the Australian Capital Territory or the Northern Territory—a Minister of the Crown of that State; or

(b) in relation to the Australian Capital Territory or the Northern Territory—a Minister of that Territory.

State prisoner means a person who is being held in custody pending trial for or sentence for, or under a sentence of imprisonment for, an offence against a law of a State, but does not include a person who is at large after having escaped from lawful custody.

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

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

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

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

tainted property means:

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

tape recording means audio recording, video recording or recording by other electronic means.

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

Territory does not include:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory.

treaty includes a convention, protocol or agreement.

trial, in relation to a foreign offence, includes any proceeding to determine whether a person should be convicted of the offence.

Section 3

vehicle includes any means of transport.

video link means a video and sound system that enables persons assembled in a place in a country to see, hear and talk to persons assembled in a place in another country.

- (1AA) A reference to an order in the definitions of **foreign forfeiture order**, **foreign pecuniary penalty order** and **foreign restraining order** in subsection (1) includes a reference to a declaration, direction, notice, decree or other decision (however described).
- (1A) In determining, for the purpose of a request by a foreign country, the Australian dollar equivalent of a fine (whether expressed as an amount or by way of penalty units) or pecuniary penalty (however described) that may be imposed on a person for an offence to which the request relates, the fine or penalty is to be translated to Australian currency:
- (a) in relation to a country for which the Australian Tax Office publishes exchange rates—at the daily exchange rate listed on the Australian Tax Office website that applies on the day on which the request is received; and
 - (b) in relation to any other country—at the exchange rate that applies at the time when the request is received.
- (2) For the purposes of this Act:
- (a) a colony, territory or protectorate of a foreign country;
 - (b) a territory for the international relations of which a foreign country is responsible; and
 - (c) a ship or aircraft of, or registered in, a foreign country;
- shall, unless the contrary intention appears, be deemed to be part of that foreign country.
- (3) Subsection (2) does not apply to a colony, territory or protectorate that is itself a foreign country to which this Act applies.
- (4) A reference in this Act to a law of a foreign country includes a reference to a law of a part of, or a law in force in a part of, the foreign country.

- (5) A reference in this Act to an Australian criminal offence is a reference to an offence against a law of the Commonwealth or of a Territory.
- (6) Without prejudice to its effect by virtue of subsection (5), this Act has effect as if a reference in this Act to an Australian criminal offence included a reference to an offence against a law of a State.

4 Act to extend to external Territories

This Act extends to every external Territory.

4A Application of the *Criminal Code*

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

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

5 Objects of the Act

The objects of this Act are:

- (a) to regulate the provision by Australia of international assistance in criminal matters when a request is made by a foreign country in respect of which powers may be exercised under this Act (whether or not in conjunction with other Australian laws); and
- (c) to facilitate the obtaining by Australia of international assistance in criminal matters.

6 Act not to limit other provision etc. of assistance

This Act does not prevent the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

Section 7

7 Application of Act

- (1) Subject to this section, this Act applies to all foreign countries.
- (2) The regulations may provide that this Act applies to a foreign country subject to:
 - (a) any mutual assistance treaty between that country and Australia that is referred to in the regulations; and
 - (b) any multilateral mutual assistance treaty (being a treaty to which that country is a party) that is referred to in the regulations.
- (3) If the regulations provide, in accordance with subsection (2), that this Act applies to a foreign country subject to a mutual assistance treaty, then:
 - (a) if the treaty relates wholly to the provision of assistance in criminal matters—this Act applies subject to the limitations, conditions, exceptions or qualifications that are necessary to give effect to the treaty in relation to that country; or
 - (b) if the treaty relates in part to the provision of assistance in criminal matters—this Act applies subject to the limitations, conditions, exceptions or qualifications that are necessary to give effect, in relation to that country, to that part of the treaty that relates to the provision of assistance in criminal matters.

8 Refusal of assistance

- (1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Attorney-General:
 - (a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or
 - (b) there are substantial grounds for believing that the request has been made with a view to investigating, prosecuting or punishing a person for a political offence; or

- (ba) the request relates to a foreign order in relation to an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or
 - (c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, sexual orientation, religion, nationality or political opinions; or
 - (ca) there are substantial grounds for believing that, if the request was granted, the person would be in danger of being subjected to torture; or
 - (d) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that if it had occurred in Australia, would have constituted an offence under the military law of Australia but not also under the ordinary criminal law of Australia; or
 - (da) both of the following subparagraphs are satisfied:
 - (i) the request relates to a foreign order in relation to an offence;
 - (ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would have constituted an offence under the military law of Australia but not also under the ordinary criminal law of Australia; or
 - (e) the granting of the request would prejudice the sovereignty, security or national interest of Australia or the essential interests of a State or Territory.
- (1A) A request by a foreign country for assistance under this Act must be refused if:
- (a) the request relates to the investigation, prosecution or punishment of:
 - (i) a person arrested or detained on suspicion of having committed an offence; or
 - (ii) a person charged with, or convicted of, an offence; and

Section 8

- (b) the offence is one in respect of which the death penalty may be imposed in the foreign country;
unless the Attorney-General is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.
- (1B) A request by a foreign country for assistance under this Act may be refused if the Attorney-General:
- (a) believes that the provision of the assistance may result in the death penalty being imposed on a person; and
 - (b) after taking into consideration the interests of international criminal co-operation, is of the opinion that in the circumstances of the case the request should not be granted.
- (2) A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General:
- (a) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received; or
 - (b) both of the following subparagraphs are satisfied:
 - (i) the request relates to a foreign order in relation to an offence;
 - (ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received; or
 - (c) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where:
 - (i) the person has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or in Australia or another country; or
 - (ii) the person has undergone the punishment provided by the law of the foreign country, or of Australia or another country;

- in respect of that offence or of another offence constituted by the same act or omission as that offence; or
- (d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Australia; or
 - (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Australia); or
 - (f) the provision of the assistance would impose an excessive burden on the resources of the Commonwealth or of a State or Territory; or
 - (g) it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

9 Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to such conditions as the Attorney-General determines.

10 Request by Australia

- (1) A request for international assistance in a criminal matter that Australia is authorised to make under this Act may be made only by the Attorney-General.
- (2) Subsection (1) does not prevent the Attorney-General on behalf of Australia from requesting international assistance in a criminal matter other than assistance of a kind that may be requested under this Act.

11 Request by foreign country

- (1) A request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General, in writing, to receive requests by foreign countries under this Act.

Section 11

- (2) A request must be in writing and must include or be accompanied by the following information:
- (a) the name of the authority concerned with the criminal matter to which the request relates;
 - (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (c) a description of the purpose of the request and of the nature of the assistance being sought;
 - (d) any information that may assist in giving effect to the request.

However, a failure to comply with this subsection is not a ground for refusing the request.

- (3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Attorney-General.
- (4) If a foreign country makes a request to a court in Australia for international assistance in a criminal matter:
- (a) the court must refer the request to the Attorney-General; and
 - (b) the request is then taken, for the purposes of this Act, to have been made to the Attorney-General.

Part II—Assistance in relation to taking of evidence and production of documents or other articles

Division 1—Requests by Australia

12 Requests by Australia

- (1) Australia may request the appropriate authority of a foreign country:
 - (a) to arrange for:
 - (i) evidence to be taken in the foreign country; or
 - (ii) a document or other article in the foreign country to be produced;
for the purposes of a proceeding or investigation relating to a criminal matter in Australia; and
 - (aa) if subparagraph (a)(i) applies—to arrange for a tape recording to be made of the evidence to be taken; and
 - (b) to arrange for the evidence (and if paragraph (aa) applies, the tape recording or a copy of it), document or other article to be sent to Australia.
- (2) To remove any doubt, it is stated that:
 - (a) any evidence may be taken; or
 - (b) any document or other article may be obtained;
in the foreign country even though, under Australian law:
 - (c) the evidence could not have been taken; or
 - (d) the document or other article could not have been obtained;
by using in the circumstances processes similar to those used in the foreign country.
- (3) When making a request under subsection (1), Australia may also request that an opportunity be given for the person giving evidence, or producing the document or other article, to be

Part II Assistance in relation to taking of evidence and production of documents or other articles

Division 1 Requests by Australia

Section 12

examined or cross-examined in person, or through a video link from Australia, by:

- (a) any party to the proceeding or that party's legal representative; or
- (b) any person being investigated or that person's legal representative.

Division 2—Requests by foreign countries

13 Requests by foreign countries for the taking of evidence or the production of documents

- (1) This section applies if a foreign country (the *requesting country*) requests:
- (a) any of the following:
 - (i) that evidence be taken in Australia;
 - (ii) that evidence be taken in Australia and a tape recording be made of the evidence taken;
 - (iii) that evidence be taken in Australia for live transmission by means of video link to a courtroom or other place in the requesting country; or
 - (b) that documents or other articles in Australia be produced; for the purposes of a proceeding in relation to a criminal matter in that country or another foreign country (the *foreign proceeding*).
- (1A) The Attorney-General may, by writing in accordance with the approved form, authorise:
- (a) the taking of the evidence and its transmission to the requesting country; or
 - (b) the production of the documents or other articles and their transmission to the requesting country.
- (2) If the Attorney-General gives an authorisation under subsection (1A):
- (a) in the case of the taking of evidence—a Magistrate or eligible Federal Circuit Court Judge may do all or any of the following:
 - (i) take evidence on oath or affirmation of the witness appearing before the Magistrate or Judge to give evidence in relation to the matter;
 - (ii) direct that all or part of the proceeding be conducted in private;

Part II Assistance in relation to taking of evidence and production of documents or other articles

Division 2 Requests by foreign countries

Section 13

- (iii) require a person to leave the place in Australia where the giving of evidence is taking place or going to take place;
 - (iv) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the foreign proceeding;
 - (v) subject to subsection 13AB(1), require the production of documents or other articles;
 - (vi) take such action as the Magistrate or Judge considers appropriate to facilitate the foreign proceeding;
 - (vii) perform any other function required by the regulations; or
- (b) in the case of the production of documents or other articles—a Magistrate or eligible Federal Circuit Court Judge may, subject to subsection 13AB(1), require the production of the documents or other articles and, where the documents or other articles are produced, a Magistrate or eligible Federal Circuit Court Judge must send the documents, or copies of the documents certified by that Magistrate or Judge to be true copies, or the other articles, to the Attorney-General.

Note 1: Subparagraph (2)(a)(i)—see also subsection (2C).

Note 2: Subparagraphs (2)(a)(ii), (iii) and (iv)—see also subsection (2B).

- (2A) However, a Magistrate or eligible Federal Circuit Court Judge may not make a ruling about the admissibility of evidence in a foreign proceeding.
- (2B) If a Magistrate or eligible Federal Circuit Court Judge is taking evidence for live transmission by means of video link to a courtroom or other place in the requesting country, the Magistrate or Judge:
- (a) may only exercise the powers mentioned in subparagraphs (2)(a)(ii), (iii) and (iv) at the request of the foreign court; and
 - (b) may, at the request of the foreign court, assist with the administering by the foreign court of an oath or affirmation; and

- (c) may administer an oath or affirmation.
- (2C) If a Magistrate or eligible Federal Circuit Court Judge takes evidence as mentioned in subparagraph (2)(a)(i) but not for live transmission by means of video link to a courtroom, or other place, in the requesting country, the Magistrate or Judge must:
- (a) if the requesting country requests that a tape recording be made of the evidence taken—cause a tape recording to be made of the evidence, certify that the evidence on the tape recording was taken by the Magistrate or Judge and cause the tape recording, or a copy of it, to be sent to the Attorney-General; and
 - (b) in any other case—cause the evidence to be put in writing, certify that the evidence was taken by the Magistrate or Judge and cause the writing so certified to be sent to the Attorney-General.
- (2D) If, in taking evidence as mentioned in paragraph (2)(a), a Magistrate or eligible Federal Circuit Court Judge requires the production of documents or other articles under subparagraph (2)(a)(v), a Magistrate or eligible Federal Circuit Court Judge must send the documents, or copies of the documents certified by that Magistrate or Judge to be true copies, or the other articles, to the Attorney-General.
- (3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).
- (4) The Magistrate or eligible Federal Circuit Court Judge conducting a proceeding under subsection (2) may permit:
- (a) the person to whom the proceeding in the requesting country relates;
 - (b) any other person giving evidence or producing documents or other articles at the proceeding before the Magistrate or Judge; and
 - (c) the relevant authority of the requesting country;

Part II Assistance in relation to taking of evidence and production of documents or other articles

Division 2 Requests by foreign countries

Section 13AA

to have legal representation at the proceeding before the Magistrate or Judge.

- (4A) If the requesting country has so requested, the Magistrate or eligible Federal Circuit Court Judge conducting a proceeding under subsection (2) may permit:
- (a) any person to whom the proceeding in the requesting country relates or that person's legal representative; or
 - (b) the legal representative of the relevant authority of the requesting country;
- to examine or cross-examine in person, or through a video link from the requesting country, any person giving evidence or producing a document or other article, at the proceeding.
- (4B) For the purposes of Part III of the *Crimes Act 1914*:
- (a) the proceeding before the Magistrate or eligible Federal Circuit Court Judge is a judicial proceeding; and
 - (b) evidence taken from a witness on oath or affirmation is testimony given in a judicial proceeding.
- (5) The certificate by the Magistrate or eligible Federal Circuit Court Judge under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present:
- (a) the person to whom the proceeding in the requesting country 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).

13AA Enforcement of orders

- (1) If a Magistrate or eligible Federal Circuit Court Judge is conducting a proceeding under subsection 13(2) and makes an order relating to the conduct of the proceeding, the order must be complied with.
 - (2) In the case of an eligible Federal Circuit Court Judge, subject to the Rules of Court made under the *Federal Circuit Court of Australia*
-

Section 13AB

Act 1999, the order may be enforced as if the order were an order of the Federal Circuit Court of Australia.

- (3) In any other case, subject to the rules of the court of which the Magistrate is a member, the order may be enforced as if the order were an order of that court.

13AB Commonwealth and State and Territory laws apply in relation to taking evidence and producing documents etc.

- (1) Subject to subsection (2), the following laws apply, so far as they are capable of application, for the purposes of a proceeding under section 13 in a State or Territory:
- (a) laws of the Commonwealth with respect to the compelling of persons to attend before an eligible Federal Circuit Court Judge;
 - (b) laws of the Commonwealth with respect to giving evidence, answering questions and producing documents or other articles before an eligible Federal Circuit Court Judge;
 - (c) laws of a State or Territory with respect to the compelling of persons to attend before a Magistrate;
 - (d) laws of that State or Territory with respect to giving evidence, answering questions and producing documents or other articles before a Magistrate.
- (2) For the purposes of section 13:
- (a) the person to whom the proceeding in the requesting country relates is competent but not compellable to give evidence; and
 - (b) a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in the requesting country or another foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in that country.

Section 13A

- (3) Paragraph (2)(b) does not apply if its application would be inconsistent with a provision of a mutual assistance treaty between Australia and the requesting country concerned.
- (4) A duly authenticated foreign law immunity certificate is admissible in proceedings under section 13 as prima facie evidence of the matters stated in the certificate.

13A Requests by foreign countries for provision of material lawfully obtained

- (1) If:
 - (a) a foreign country (the *requesting country*) has commenced an investigation into, or proceedings in relation to, a serious offence against the laws of that country; and
 - (b) that foreign country requests the provision of material relevant to that investigation or those proceedings; and
 - (c) the Attorney-General is satisfied that the material requested is:
 - (i) material lawfully obtained by an enforcement agency in Australia; and
 - (ii) material lawfully in the possession of that enforcement agency;

the Attorney-General may, by writing in accordance with the approved form, authorise the provision of that material to the requesting country.
- (2) The Attorney-General may only authorise the provision to the requesting country of material specified in column 1 of the following table if the request relates to a serious offence against the laws of that country specified in column 2 of the table:

Section 13A

Offences for which provision of particular material may be authorised		
Item	Column 1	Column 2
1	material that is or includes protected information	a serious offence punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty
2	material that is or includes lawfully accessed information or stored communications warrant information	a serious offence punishable by a maximum penalty of: (a) imprisonment for 3 years or more, imprisonment for life or the death penalty; or (b) a fine of an amount that is at least equivalent to 900 penalty units
3	material that is or includes lawfully intercepted information or interception warrant information	(a) a serious offence punishable by a maximum penalty of imprisonment for 7 years or more, imprisonment for life or the death penalty; or (b) a cartel offence punishable by a maximum penalty of a fine of an amount that is at least equivalent to \$10,000,000

- (3) An authorisation by the Attorney-General under subsection (1) may include a direction to an authorised officer of the enforcement agency having possession of the material about how the material is to be provided to that foreign country.
- (4) In authorising the provision of material to a foreign country, the Attorney-General may specify the uses to which that material can be put.
- (5) An authorisation by the Attorney-General under subsection (1) is not a legislative instrument.

Part II Assistance in relation to taking of evidence and production of documents or other articles

Division 2 Requests by foreign countries

Section 13A

(6) In this section:

authorised officer includes a law enforcement officer within the meaning of the *Surveillance Devices Act 2004*.

enforcement agency includes a law enforcement agency within the meaning of the *Surveillance Devices Act 2004*.

material lawfully obtained by an enforcement agency in Australia includes:

- (a) material obtained from individuals or entities by consent; and
- (b) material obtained by warrant or the exercise of a coercive power by a court in Australia for the purposes of a domestic investigation or prosecution.

Part III—Assistance in relation to search and seizure

14 Requests by Australia for search and seizure

- (1) This section applies to a proceeding or investigation relating to a criminal matter involving a serious offence against an Australian law if there are reasonable grounds to believe that a thing relevant to the proceeding or investigation may be located in a foreign country.
- (2) If this section applies to a proceeding or investigation, Australia may request the appropriate authority of the foreign country:
 - (a) to obtain a warrant or other instrument that, in accordance with the law of the foreign country, authorises:
 - (i) a search for a thing relevant to the proceeding or investigation; and
 - (ii) if such a thing, or any other thing that is or may be relevant to the proceeding or investigation is found as a result of the search—the seizure of that thing; and
 - (b) to arrange for the thing that has been seized to be sent to Australia.
- (3) If the appropriate authority of the foreign country has obtained any thing relevant to the proceeding or investigation by means of a process authorised by the law of that country other than the issue (as requested by Australia) of a warrant or other instrument authorising the seizure of the thing, the thing:
 - (a) is not inadmissible in evidence in the proceeding; or
 - (b) is not precluded from being used for the purposes of the investigation;on the ground alone that it was obtained otherwise than in accordance with the request.

Section 15

15 Requests by foreign countries for search and seizure—action by Attorney-General

Where:

- (a) a proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;
- (b) there are reasonable grounds to believe that evidential material relating to the investigation or proceeding is located in Australia; and
- (c) the foreign country requests the Attorney-General to arrange for the evidential material to be obtained;

the Attorney-General may, in his or her discretion, authorise a police officer, in writing, to apply to a Magistrate or eligible Federal Circuit Court Judge for one or more search warrants in respect of the evidential material.

Note: Divisions 2 and 3 of Part VIIA make provision relating to applications for, and the issue and execution of, search warrants requested by foreign countries.

Part IIIA—Assistance in relation to stored communications

15B Requests by foreign countries for stored communications

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

- (a) an investigation, or investigative proceeding, relating to a criminal matter involving an offence against the law of a foreign country (the *requesting country*) has commenced in the requesting country; and
- (b) the offence to which the investigation, or investigative proceeding, relates is punishable by a maximum penalty of:
 - (i) imprisonment for 3 years or more, imprisonment for life or the death penalty; or
 - (ii) a fine of an amount that is at least equivalent to 900 penalty units; and
- (c) there are reasonable grounds to believe that stored communications relevant to the investigation, or investigative proceeding, are held by a carrier; and
- (d) the requesting country has requested the Attorney-General to arrange for access to the stored communications.

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

Part IIIBA—Assistance in relation to use of surveillance devices

15C Requests by Australia for surveillance devices

- (1) This section applies if:
 - (a) an investigation in relation to an offence punishable by a maximum penalty of imprisonment for 3 years or more has commenced in Australia; and
 - (b) the use of a surveillance device (however described) is reasonably necessary for the purpose of obtaining information relevant to:
 - (i) the commission of the offence; or
 - (ii) the identity or location of the offenders.
- (2) Australia may request an appropriate authority of a foreign country:
 - (a) to authorise the use of a surveillance device (however described), in accordance with the law of that country, to obtain the information referred to in paragraph (1)(b); and
 - (b) to arrange for any such information that has been obtained to be sent to Australia.
- (3) Subsection (4) applies if:
 - (a) Australia makes a request under this section; and
 - (b) the foreign country obtains any information referred to in paragraph (1)(b) by means of a process authorised by the law of that country other than the use (as requested by Australia) of a surveillance device.
- (4) The information obtained by the foreign country:
 - (a) is not inadmissible in evidence in a proceeding that relates to the investigation; or
 - (b) is not precluded from being used for the purposes of the investigation;

on the ground alone that it was obtained otherwise than in accordance with the request.

15CA Requests by foreign countries for surveillance devices

- (1) The Attorney-General may, in his or her discretion, authorise an eligible law enforcement officer, in writing, to apply for a surveillance device warrant under section 14 of the *Surveillance Devices Act 2004* if the Attorney-General is satisfied that:
- (a) an investigation, or investigative proceeding, relating to a criminal matter involving an offence against the law of a foreign country (the *requesting country*) that is punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty has commenced in the requesting country; and
 - (b) the requesting country requests the Attorney-General to arrange for the use of a surveillance device; and
 - (c) the requesting country has given appropriate undertakings in relation to:
 - (i) ensuring that the information obtained as a result of the use of the surveillance device will only be used for the purpose for which it is communicated to the requesting country; and
 - (ii) the destruction of a document or other thing containing information obtained as a result of the use of the surveillance device; and
 - (iii) any other matter the Attorney-General considers appropriate.
- (2) In this section:

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

Part IIIBB—Assistance in relation to data held in computers

15CB Simplified outline of this Part

- If a foreign country requests the Attorney-General to arrange for access to data held in a computer, the Attorney-General may authorise an eligible law enforcement officer to apply for a computer access warrant under section 27A of the *Surveillance Devices Act 2004*.
- The authorisation relates to an investigation, or investigative proceeding, relating to a criminal matter involving an offence against the law of the foreign country.

Note: See subsection 27A(4) of the *Surveillance Devices Act 2004*.

15CC Requests by foreign countries for assistance in relation to data held in computers

- (1) The Attorney-General may, in the Attorney-General's discretion, authorise an eligible law enforcement officer, in writing, to apply for a computer access warrant under section 27A of the *Surveillance Devices Act 2004* if the Attorney-General is satisfied that:
 - (a) an investigation, or investigative proceeding, relating to a criminal matter involving an offence against the law of a foreign country (the **requesting country**) that is punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty has commenced in the requesting country; and
 - (b) the requesting country requests the Attorney-General to arrange for access to data held in a computer (the **target computer**); and

- (c) the requesting country has given appropriate undertakings in relation to:
- (i) ensuring that data obtained as a result of access under the warrant will only be used for the purpose for which it is communicated to the requesting country; and
 - (ii) the destruction of a document or other thing containing data obtained as a result of access under the warrant; and
 - (iii) any other matter the Attorney-General considers appropriate.
- (2) The target computer may be any one or more of the following:
- (a) a particular computer;
 - (b) a computer on particular premises;
 - (c) a computer associated with, used by or likely to be used by, a person (whose identity may or may not be known).
- (3) In this section:

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

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

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

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

Part IIIB—Assistance in relation to telecommunications data

15D Requests by foreign countries for telecommunications data

- (1) This section applies if:
 - (a) a foreign country requests the disclosure of specified information or specified documents that come into existence during a specified period; and
 - (b) the information or documents relate to the fact of a communication passing over a telecommunications system.
- (2) To avoid doubt, information or documents do not relate to the fact of a communication passing over a telecommunications system:
 - (a) if the information is the contents or substance of a communication; or
 - (b) to the extent that the documents contain the contents or substance of a communication.
- (3) The Attorney-General may authorise the making of an authorisation under section 180B of the *Telecommunications (Interception and Access) Act 1979*, of a disclosure of information or documents to which this section applies, if he or she is satisfied that:
 - (a) an investigation relating to a criminal matter involving an offence against the law of the foreign country has commenced in that country; and
 - (b) the offence:
 - (i) is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; or
 - (ii) involves an act or omission that, if it had occurred in Australia, would have constituted a serious offence within the meaning of section 5D of the *Telecommunications (Interception and Access) Act 1979*.

Part IV—Arrangements for persons to give evidence or assist investigations

Division 1—Requests by Australia

16 Requests for removal of certain persons to Australia

- (1) Where:
- (a) a proceeding relating to a criminal matter has commenced in Australia; and
 - (b) a person who is in a foreign country:
 - (i) is a foreign prisoner;
 - (ii) is capable of giving evidence relevant to the proceeding; and
 - (iii) has given his or her consent to being removed to Australia for the purpose of giving evidence in the proceeding;

Australia may request the foreign country to authorise the attendance of the person at a hearing in connection with the proceeding.

- (2) Where:
- (a) an investigation relating to a criminal matter has commenced in Australia; and
 - (b) a person who is in a foreign country:
 - (i) is a foreign prisoner;
 - (ii) is capable of giving assistance in relation to the investigation; and
 - (iii) has given his or her consent to being removed to Australia for the purposes of giving assistance in relation to the investigation;

Australia may request the foreign country to authorise the removal of the person to Australia for the purpose of giving assistance in relation to the investigation.

Section 17

- (3) If a request is made under subsection (1) or (2), the Attorney-General may make arrangements with an appropriate authority of the foreign country for the purposes of:
- (a) the removal of the person to Australia;
 - (b) the custody of the person while in Australia;
 - (c) the return of the person to the foreign country; and
 - (d) other relevant matters.

17 Arrangements between Attorney-General and State Ministers in relation to custody of certain persons

- (1) The Attorney-General may make arrangements with a State Minister in relation to the keeping of persons who are in Australia pursuant to requests under section 16 in custody in the State.
- (2) The Attorney-General may arrange with a State Minister with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

18 Custody of certain persons

Where:

- (a) a person is to be brought to Australia from a foreign country pursuant to a request under section 16; and
- (b) the foreign country requests that the person be kept in custody while he or she is in Australia;

the person shall, while the person is in Australia or travelling to or from Australia pursuant to the request, be kept in such custody as the Attorney-General directs in writing.

19 Immunities

- (1) Where a person is in Australia:
- (a) pursuant to a request under section 16; or
 - (b) to give evidence in a proceeding, or to give assistance in relation to an investigation, pursuant to a request made by or

on behalf of the Attorney-General (not being a request under section 16) for international assistance in a criminal matter; the person, subject to subsection (2), shall not:

- (c) be detained, prosecuted or punished in Australia for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request;
 - (d) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from the foreign country pursuant to the request, being a civil suit to which the person could not be subjected if the person were not in Australia;
 - (e) be required to give evidence in any proceeding in Australia other than the proceeding to which the request relates (if any).
 - (f) be required, in the proceeding to which the request relates (if any), to answer any question that the person would not be required to answer in a proceeding in the foreign country relating to a criminal matter; or
 - (g) be required, in the proceeding to which the request relates (if any), to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.
- (1A) A duly authorised foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.
- (2) Subsection (1) ceases to apply to a person if:
- (a) the person has left Australia; or
 - (b) the person has had the opportunity of leaving Australia and has remained in Australia otherwise than for:
 - (i) the purpose to which the request relates;
 - (ii) the purpose of giving evidence in a proceeding in Australia certified by the Attorney-General, in writing,

Section 20

to be a proceeding in which it is desirable that the person give evidence; or

- (iii) the purpose of giving assistance in relation to an investigation in Australia certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

- (2A) Paragraph (1)(f) or (g) does not apply in a case where its application would be inconsistent with a provision of a mutual assistance treaty between Australia and the foreign country concerned.
- (3) A certificate given by the Attorney-General for the purposes of subparagraph (2)(b)(ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).
- (4) This section binds the Crown in right of the Commonwealth and of each of the States.

20 Status of person prosecuted for offence committed after departure from foreign country

- (1) Where a person has come to Australia pursuant to a request under section 16, the person shall be taken, for the purposes of this Act, to be in Australia pursuant to the request during any period during which the person remains in Australia for the purpose of being tried for an Australian criminal offence that the person is alleged to have committed after the person's departure from the foreign country.
- (2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Attorney-General directs under section 18.

21 Limitation on use of evidence or assistance given by certain persons

- (1) Where:
- (a) a person is in Australia to give evidence in a proceeding:
 - (i) because of a request under subsection 16(1); or
 - (ii) because of a request (other than a request under that subsection) made by the Attorney-General for international assistance in a criminal matter; and
 - (b) the person has given evidence in the proceeding to which the request related or in a proceeding certified by the Attorney-General under subparagraph 19(2)(b)(ii) in relation to the person;

that evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against Australian law, other than the offence of perjury in relation to the giving of that evidence.

- (1A) If:
- (a) a person is in Australia to give assistance in relation to an investigation:
 - (i) because of a request under subsection 16(2); or
 - (ii) because of a request (other than a request under that subsection) made by the Attorney-General for international assistance in a criminal matter; and
 - (b) the person has given assistance in relation to the investigation to which the request related or in relation to an investigation certified by the Attorney-General under subparagraph 19(2)(b)(iii) in relation to the person;
- anything said or done by the person when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Australian law.
- (2) This section binds the Crown in right of the Commonwealth and of each of the States.

Section 22

22 Conditions of imprisonment

The laws of a State or Territory with respect to:

- (a) the conditions of imprisonment of persons imprisoned in that State or Territory for offences against the law of that State or Territory; and
- (b) the treatment of any such persons during imprisonment; and
- (c) the transfer of any such persons from prison to prison;

apply, so far as they are capable of application, in relation to a person who is in Australia pursuant to a request under section 16 and who has been committed to a prison in that State or Territory in accordance with a direction of the Attorney-General under this Act.

23 Release of certain persons upon request by foreign country

Where:

- (a) a person is being held in custody in accordance with a direction of the Attorney-General under section 18; and
- (b) the foreign country from which the person has been brought requests the release of the person from custody;

the Attorney-General shall direct that the person be released from custody.

25 Arrest of person who has escaped from custody

- (1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person:
 - (a) has been brought to Australia pursuant to a request under section 16; and
 - (b) has escaped from lawful custody while in Australia pursuant to the request.
- (2) The police officer must, as soon as practicable, take the person before a Magistrate or eligible Federal Circuit Court Judge.
- (3) If the Magistrate or Judge is satisfied that the person has escaped from lawful custody, the Magistrate or Judge may issue a warrant

authorising any police officer to return the person to lawful custody.

25A Aiding persons to escape etc.

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

- (a) arrest under section 25 of this Act were arrest in respect of an offence against a law of the Commonwealth; and
- (b) custody while in Australia under a request under section 16 of this Act were custody in respect of an offence against a law of the Commonwealth.

Division 2—Requests by foreign countries

26 Requests for giving of evidence at hearings in foreign countries

(1) Where:

- (a) a proceeding relating to a criminal matter has commenced in a foreign country;
- (b) the foreign country requests the attendance at a hearing in connection with the proceeding of a federal prisoner or a State prisoner who is in Australia (whether or not in custody);
- (c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceeding; and
- (d) the Attorney-General is satisfied that:
 - (i) the prisoner has consented to giving evidence in the foreign country; and
 - (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may, in his or her discretion:

- (e) in a case where the prisoner is being held in custody:
 - (i) if the prisoner is a federal prisoner and is not also a State prisoner—direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding;
 - (ii) if the prisoner is a federal prisoner and also a State prisoner—direct, subject to the obtaining of any approvals required to be obtained from an authority of the relevant State, that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding; and
 - (iii) in any case, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner—make arrangements for the travel of the prisoner to the foreign country in the

- custody of a police or prison officer appointed by the Attorney-General for the purpose; or
- (f) in a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody:
- (i) if the prisoner is a federal prisoner and is not also a State prisoner—approve the travel of the prisoner to the foreign country to give evidence at the proceeding and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required;
 - (ii) if the prisoner is a federal prisoner and also a State prisoner—subject to the obtaining of any approvals, authorities or permissions required to be obtained from an authority of the relevant State and the making of any necessary variations to the parole or other order or licence to be at large, approve the travel of the prisoner to the foreign country to give evidence at the proceeding and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large made or granted, as the case may be, under a law of the Commonwealth or of a Territory as may be required; and
 - (iii) in any case, subject to the obtaining of any necessary approvals, authorities, permissions or variations of the parole or other order or licence to be at large—make arrangements for the travel of the prisoner to the foreign country.
- (2) Where:
- (a) a proceeding relating to a criminal matter has commenced in a foreign country;
 - (b) the foreign country requests the attendance at a hearing in connection with the proceeding of a person (not being a federal prisoner or a State prisoner) who is in Australia;
 - (c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceeding; and

Section 26

(d) the Attorney-General is satisfied that:

- (i) the person has consented to giving evidence in the foreign country; and
- (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may, in his or her discretion, make arrangements for the travel of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person give evidence in the foreign country are:

(a) that the person shall not:

- (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Australia;
- (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Australia, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
- (iii) be required to give evidence in any proceeding in the foreign country other than the proceeding to which the request relates;

unless:

- (iv) the person has left the foreign country; or
- (v) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving evidence in the proceeding to which the request relates;

(b) that any evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;

- (c) that the person will be returned to Australia in accordance with arrangements agreed by the Attorney-General;
- (d) in a case where the person is being held in custody in Australia and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country:
 - (i) the making of appropriate arrangements for that purpose;
 - (ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Australian law; and
 - (iii) if the person is released in the foreign country as mentioned in subparagraph (ii)—that the person's accommodation and expenses pending the completion of the proceeding to which the request relates will be paid for by the foreign country; and
- (e) such other matters (if any) as the Attorney-General thinks appropriate.

27 Requests for assistance in relation to investigations in foreign countries

- (1) Where:
 - (a) an investigation relating to a criminal matter has commenced in a foreign country;
 - (b) the foreign country requests the removal of a federal prisoner or a State prisoner who is in Australia (whether or not in custody) to the foreign country for the purpose of giving assistance in relation to the investigation;
 - (c) there are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and
 - (d) the Attorney-General is satisfied that:

Section 27

- (i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and
- (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may, in his or her discretion:

- (e) in a case where the prisoner is being held in custody:
 - (i) if the prisoner is a federal prisoner and is not also a State prisoner—direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give assistance in relation to the investigation;
 - (ii) if the prisoner is a federal prisoner and also a State prisoner—direct, subject to the obtaining of any approvals required to be obtained from an authority of the relevant State, that the prisoner be released from prison for the purpose of travelling to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (iii) in any case, subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner—make arrangements for the travel of the prisoner to the foreign country in the custody of a police or prison officer appointed by the Attorney-General for the purpose; or
- (f) in a case where the prisoner, having been released from custody on a parole or other order or licence to be at large, is not being held in custody:
 - (i) if the prisoner is a federal prisoner and is not also a State prisoner—approve the travel of the prisoner to the foreign country for the purpose of giving assistance in relation to the investigation and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required;
 - (ii) if the prisoner is a federal prisoner and also a State prisoner—subject to the obtaining of any approvals,

authorities or permissions required to be obtained from an authority of the relevant State and the making of any necessary variations to the parole or other order or licence to be at large, approve the travel of the prisoner to the foreign country for the purpose of giving assistance in relation to the investigation and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large made or granted, as the case may be, under a law of the Commonwealth or of a Territory as may be required; and

- (iii) in any case, subject to the obtaining of any necessary approvals, authorities, permissions or variations of the parole or other order or licence to be at large—make arrangements for the travel of the prisoner to the foreign country.

(2) Where:

- (a) an investigation relating to a criminal matter has commenced in a foreign country;
- (b) the foreign country requests that a person (not being a federal prisoner or a State prisoner) who is in Australia travel to the foreign country to give assistance in relation to the investigation;
- (c) there are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation; and
- (d) the Attorney-General is satisfied that:
- (i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and
- (ii) the foreign country has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may, in his or her discretion, make arrangements for the travel of the person to the foreign country.

Section 27

- (3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation are:
- (a) that the person shall not:
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Australia;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Australia, being a civil suit to which the person could not be subjected if the person were not in the foreign country; or
 - (iii) be required to give evidence in any proceeding in the foreign country;
 - unless:
 - (iv) the person has left the foreign country; or
 - (v) the person has had the opportunity of leaving the foreign country and has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;
 - (b) that the person will be returned to Australia in accordance with arrangements agreed by the Attorney-General;
 - (c) in a case where the person is being held in custody in Australia and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country:
 - (i) the making of appropriate arrangements for that purpose;
 - (ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under Australian law; and

- (iii) if the person is released in the foreign country as mentioned in subparagraph (ii)—that the person's accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the foreign country; and
- (d) such other matters (if any) as the Attorney-General thinks appropriate.

28 Effect of removal to foreign country on prisoner's term of imprisonment

Where a prisoner who is serving a term of imprisonment for an offence against a law of the Commonwealth or of a Territory is released from a prison pursuant to a request by a foreign country under section 26 or 27, the prisoner shall, while in custody in connection with the request (including custody outside Australia), be deemed to be continuing to serve that term of imprisonment.

Part IVA—Forensic procedures

Division 1—Requests by Australia

28A Requests by Australia for forensic procedures

(1) If:

- (a) a proceeding relating to a criminal matter has commenced in Australia; and
- (b) there are reasonable grounds to believe carrying out a forensic procedure on a person in a foreign country may result in evidence relevant to the proceeding;

Australia may request the foreign country to authorise the carrying out of a forensic procedure on the person for the purpose of giving assistance in connection with the proceeding.

(2) If:

- (a) an investigation relating to a criminal matter has commenced in Australia; and
- (b) carrying out a forensic procedure on a person in a foreign country may result in evidence relevant to the investigation;

Australia may request the foreign country to authorise the carrying out of a forensic procedure on the person for the purpose of giving assistance in relation to the investigation.

(3) To avoid doubt, Australia may request that a forensic procedure be carried out in the foreign country even if, under Australian law, the forensic procedure could not have been carried out by using processes similar to those used in the foreign country.

(4) Subsection (5) applies if:

- (a) Australia makes a request under this section; and
- (b) the foreign country obtains any thing relevant to the proceeding or investigation by means of a process authorised by the law of that country other than the carrying out (as

requested by Australia) of a forensic procedure on a particular person.

- (5) The thing obtained by the foreign country:
- (a) is not inadmissible in evidence in the proceeding; or
 - (b) is not precluded from being used for the purposes of the investigation;
- on the ground alone that it was obtained otherwise than in accordance with the request.

Division 2—Requests by foreign countries

28B Requests by foreign countries for forensic procedures

- (1) If a foreign country requests that a forensic procedure be carried out on a person, the Attorney-General may authorise a constable to apply, in accordance with Part ID of the *Crimes Act 1914*, to a magistrate for an order for the carrying out of the forensic procedure on the person, so long as, if the person is a suspect within the meaning of subsection 23WA(1) of that Act, the constable is an authorised applicant within the meaning of that subsection.
- (2) The Attorney-General must not authorise a constable under subsection (1) unless the Attorney-General is satisfied of the following matters:
 - (a) a request has been made by a foreign country that a forensic procedure be carried out on a person;
 - (b) unless the person is a child or an incapable person—the foreign country has:
 - (i) started investigating whether the person has committed a foreign serious offence against its laws; or
 - (ii) started proceedings against the person for a foreign serious offence;
 - (c) the person is, or is believed to be, in Australia;
 - (d) the foreign country has given:
 - (i) appropriate undertakings in relation to the retention, use and destruction of forensic material, or of information obtained from analysis of that forensic material; and
 - (ii) any other undertakings that the Attorney-General considers necessary;
 - (e) unless the person is a child or an incapable person—the person has been given an opportunity to consent to the forensic procedure and has not consented to it;
 - (f) if the person is a child or an incapable person, the matters specified in subsection (3).

- (3) If the person is a child or an incapable person, the Attorney-General must:
- (a) be satisfied that either of the following applies:
 - (i) the consent of the parent or guardian cannot reasonably be obtained or has been withdrawn;
 - (ii) the parent or guardian is a suspect in relation to the foreign serious offence; and
 - (b) believe that, having regard to the best interests of the child or incapable person, it is appropriate to make the authorisation.

28C Providing forensic evidence to foreign countries

- (1) If:
- (a) a foreign country requests that a forensic procedure be carried out on a person; and
 - (b) the Attorney-General authorises a constable to make an application of the kind mentioned in subsection 28B(1); and
 - (c) a forensic procedure is carried out on the person;
- the Attorney-General may direct the constable as to how the forensic evidence is to be provided to the foreign country.
- (2) A direction by the Attorney-General under subsection (1) is not a legislative instrument.

Part V—Custody of persons in transit

29 Transit

- (1) If a person is to be transported in custody from a foreign country through Australia to another foreign country for the purposes of:
 - (a) giving evidence in a proceeding; or
 - (b) giving assistance in relation to an investigation;relating to a criminal matter in the other foreign country, the person:
 - (c) may be transported through Australia in the custody of another person; and
 - (d) if an aircraft or ship by which the person is being transported lands or calls at a place in Australia—shall be kept in such custody as the Attorney-General directs in writing until his or her transportation is continued.
- (2) Where a person who is being held in custody pursuant to a direction under paragraph (1)(d) and the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported.

31 Arrest of person in transit

- (1) Any police officer may, without warrant, arrest a person if the police officer has reasonable grounds to believe that the person was being kept in custody pursuant to a direction under paragraph 29(1)(d) and has escaped from that custody.
- (2) The police officer must, as soon as practicable, take the person before a Magistrate or eligible Federal Circuit Court Judge.
- (3) If the Magistrate or Judge is satisfied that the person has escaped from lawful custody, the Magistrate or Judge may issue a warrant

Section 31A

authorising any police officer to return the person to lawful custody.

31A Aiding persons to escape etc.

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

- (a) arrest under section 31 of this Act were arrest in respect of an offence against a law of the Commonwealth; and
- (b) custody while in Australia in accordance with a direction under paragraph 29(1)(d) of this Act were custody in respect of an offence against a law of the Commonwealth.

Part VI—Proceeds of crime

Division 1—Requests by Australia

32 Requests for enforcement of orders

Australia may request an appropriate authority of a foreign country to make arrangements for the enforcement of:

- (a) an Australian forfeiture order against property that is believed to be located in that country;
- (b) an Australian pecuniary penalty order, or an Australian literary proceeds order, where some or all of the property available to satisfy the order is believed to be located in that country; or
- (c) an Australian restraining order against property that is believed to be located in that country;

if the order was made in respect of a serious offence.

33 Requests for issue of orders in foreign countries

Where a criminal proceeding or criminal investigation has commenced in Australia in relation to a serious offence, Australia may request an appropriate authority of a foreign country to obtain the issue, in respect of the offence, of a warrant, order or other instrument similar in nature to any of the following warrants and orders under the Proceeds of Crime Act:

- (b) a restraining order;
- (c) a production order;
- (d) a search warrant;
- (e) a monitoring order.

Division 2—Requests by foreign countries

Subdivision A—Enforcement of foreign orders

33A Object of Subdivision

- (1) The object of this Subdivision is to facilitate international cooperation in the recovery of property through the registration and enforcement of foreign orders in Australia.
- (2) For the purpose of achieving this object, it is the intention of the Parliament that the validity of foreign orders not be examined.

34 Requests for enforcement of foreign orders

- (1) If:
 - (a) a foreign country requests the Attorney-General to make arrangements for the enforcement of:
 - (i) a foreign forfeiture order, made in respect of a foreign serious offence, against property that is reasonably suspected of being located in Australia; or
 - (ii) a foreign pecuniary penalty order, made in respect of a foreign serious offence, where some or all of the property available to satisfy the order is reasonably suspected of being located in Australia; and
 - (b) the Attorney-General is satisfied that:
 - (i) a person has been convicted of the offence; and
 - (ii) the conviction and the order are not subject to further appeal in the foreign country;the Attorney-General may authorise a proceeds of crime authority, in writing, to apply for the registration of the order.
- (2) If a foreign country requests the Attorney-General to make arrangements for the enforcement of:
 - (a) a foreign forfeiture order that:

Section 34A

- (i) has the effect of forfeiting a person's property on the basis that the property is, or is alleged to be, the proceeds or an instrument of a foreign serious offence (whether or not a person has been convicted of that offence); and
 - (ii) is made against property that is reasonably suspected of being located in Australia; or
 - (b) a foreign pecuniary penalty order in respect of which both of the following apply:
 - (i) the order has the effect of requiring a person to pay an amount of money on the basis that the money is, or is alleged to be, the benefit derived from a foreign serious offence (whether or not the person has been convicted of that offence);
 - (ii) some or all of the property available to satisfy the order is reasonably suspected of being located in Australia;
- the Attorney-General may authorise a proceeds of crime authority, in writing, to apply for the registration of the order.
- (3) If a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, against property that is reasonably suspected of being located in Australia, that is:
- (a) made in respect of a foreign serious offence for which a person has been convicted or charged; or
 - (b) made in respect of the alleged commission of a foreign serious offence (whether or not the identity of the person who committed the offence is known);
- the Attorney-General may authorise a proceeds of crime authority, in writing, to apply for the registration of the order.

34A Registration of foreign orders

- (1A) An application to a court for registration of a foreign order in accordance with an authorisation under this Subdivision must be to a court with proceeds jurisdiction.

Section 34B

- (1) If a proceeds of crime authority applies to a court with proceeds jurisdiction for registration of a foreign order in accordance with an authorisation under this Subdivision, the court must register the order accordingly, unless the court is satisfied that it would be contrary to the interests of justice to do so.
- (2) The proceeds of crime authority must give notice of the application:
 - (a) to specified persons the authority has reason to suspect may have an interest in the property; and
 - (b) to such other persons as the court directs.
- (3) However, the court may consider the application without notice having been given if the proceeds of crime authority requests the court to do so.
- (4) If a foreign pecuniary penalty order or a foreign restraining order is registered in a court under this Subdivision:
 - (a) a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order; and
 - (b) the amendments do not, for the purposes of this Act and the Proceeds of Crime Act, have effect until they are registered.
- (5) An order or an amendment of an order is to be registered in a court by the registration, in accordance with the rules of the court, of:
 - (a) a copy of the appropriate order or amendment sealed by the court or other authority making that order or amendment; or
 - (b) a copy of that order or amendment duly authenticated in accordance with subsection 43(2).

34B Enforcement of foreign forfeiture orders

- (1) A foreign forfeiture order registered in a court under this Subdivision has effect, and may be enforced, as if it were a forfeiture order made by the court under the Proceeds of Crime Act at the time of registration.

Section 34C

- (2) In particular, section 68 of the Proceeds of Crime Act applies in relation to the forfeiture order as if:
 - (a) the reference in subparagraph 68(1)(b)(i) of that Act to a proceeds of crime authority having applied for the order were a reference to the foreign forfeiture order having been made; and
 - (b) subparagraph 68(1)(b)(ii) of that Act did not apply if the person in question died after the authority applied for registration of the order under section 34A of this Act.
- (3) Subject to section 34C, property that is subject to a foreign forfeiture order registered under this Subdivision may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing for the purposes of this subsection.
- (4) Sections 69 and 70 and Divisions 5 to 7 of Part 2-2 of the Proceeds of Crime Act do not apply in relation to a foreign forfeiture order registered under this Subdivision.

34C Effect on third parties of registration of foreign forfeiture orders

Applications by third parties

- (1) If a court registers under section 34A a foreign forfeiture order against property, a person who:
 - (a) claims an interest in the property; and
 - (b) either:
 - (i) if the registration relates to an authorisation given under subsection 34(1)—was not convicted of a foreign serious offence in respect of which the order was made; or
 - (ii) if the registration relates to an authorisation given under subsection 34(2)—is not a person whom the court has reason to believe committed a foreign serious offence in respect of which the order was made;may apply to the court for an order under subsection (2).

Orders by the court

- (2) If, on an application for an order under this subsection, the court is satisfied that:
- (a) the applicant was not, in any way, involved in the commission of a foreign serious offence in respect of which the foreign forfeiture order was made; and
 - (b) if the applicant acquired the interest in the property at the time of or after the commission of such an offence—the property was neither proceeds nor an instrument of such an offence;
- the court must make an order:
- (c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest in the property; and
 - (d) either:
 - (i) directing the Commonwealth to transfer the interest to the applicant; or
 - (ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

Certain people need leave to apply

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

Section 34D

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 foreign forfeiture order is registered in the court.
- (7) The court may give leave to apply outside that period if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the person's part.

Procedural matters

- (8) A person who applies under subsection (1) must give to the proceeds of crime authority authorised under section 34 notice, as prescribed, of the application.
- (9) That proceeds of crime authority is to be a party to proceedings on an application under subsection (1). The Attorney-General may intervene in the proceedings.

34D Enforcement of foreign pecuniary penalty orders

- (1) A foreign pecuniary penalty order registered in a court under this Subdivision has effect, and may be enforced, as if it were a pecuniary penalty order that:
 - (a) was made by the court under the Proceeds of Crime Act at the time of registration; and
 - (b) requires the payment to the Commonwealth of the amount payable under the order.
- (2) Any amount paid (whether in Australia, in the foreign country in which the order was made or elsewhere) in satisfaction of the foreign pecuniary penalty order is taken to have been paid in satisfaction of the debt that arises because of the registration of the foreign pecuniary penalty order in that court.

- (3) Division 5 of Part 2-4 of the Proceeds of Crime Act does not apply in relation to a foreign pecuniary penalty order registered under this Subdivision.

34E Enforcement of foreign restraining orders

- (1) A foreign restraining order registered in a court under this Subdivision has effect, and may be enforced, as if it were a restraining order that:
- (a) was made by the court under the Proceeds of Crime Act at the time of the registration; and
 - (b) directed that the property specified in the order is not to be disposed of or otherwise dealt with by any person.
- (2) In particular:
- (a) section 288 of that Act applies as if:
 - (i) the reference in that section to the Official Trustee's exercise of powers under that Act included a reference to the Official Trustee's exercise of those powers in relation to a foreign restraining order so registered; and
 - (ii) the reference in that section to the Official Trustee's performance of functions or duties under that Act included a reference to the Official Trustee's performance of those functions or duties in relation to such a foreign restraining order; and
 - (b) section 289 of that Act applies as if the reference in that section to controlled property included a reference to property that is subject to an order under section 35; and
 - (c) section 290 of that Act applies as if the reference in that section to the controlled property were a reference to the property that is subject to an order under section 35.
- (3) Divisions 1, 2 and 3 of Part 2-1, section 33, Divisions 5 and 6 of Part 2-1 and sections 142, 143, 169, 170 and 282 to 287 of the Proceeds of Crime Act do not apply in relation to a foreign restraining order registered under this Subdivision.

Section 34F

Note: Division 3 of this Part contains further provisions relating to registered foreign restraining orders.

34F Copies of foreign orders sent by fax, email or other electronic means

- (1) If a copy of a sealed or authenticated copy of:
 - (a) a foreign order; or
 - (b) an amendment of a foreign order;is sent by fax, email or other electronic means, the copy is to be regarded, for the purposes of this Act, as the same as the sealed or authenticated copy.
- (2) However, if registration of the order under this Subdivision is effected by means of the copy, the registration ceases to have effect at the end of 45 days unless the sealed or authenticated copy has been filed by then in the court that registered the order.

34G Cancelling registration

- (1) The Attorney-General may direct the proceeds of crime authority authorised under section 34 to apply to a court in which:
 - (a) a foreign pecuniary penalty order; or
 - (b) a foreign restraining order;has been registered under this Subdivision for cancellation of the registration.
- (2) Without limiting subsection (1), the Attorney-General may give a direction under that subsection in relation to an order if the Attorney-General is satisfied that:
 - (a) the order has ceased to have effect in the foreign country in which the order was made; or
 - (b) cancellation of the order is appropriate having regard to the arrangements entered into between Australia and the foreign country in relation to the enforcement of orders of that kind.

- (3) The court to which a proceeds of crime authority applies in accordance with a direction under subsection (1) must cancel the registration accordingly.

34H Certain provisions of the Proceeds of Crime Act not to apply

Part 4-2 and sections 322 and 323 of the Proceeds of Crime Act do not apply to a foreign order registered under this Subdivision.

Subdivision B—Restraining orders relating to foreign criminal proceedings

34J Requests for restraining orders

If:

(a) either:

- (i) a criminal proceeding has commenced, or there are reasonable grounds to suspect that a criminal proceeding is about to commence, in a foreign country in respect of a foreign serious offence; or
- (ii) foreign confiscation proceedings have commenced, or there are reasonable grounds to suspect that such proceedings are about to commence, in a foreign country; and

(b) there are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Australia; and

(c) the foreign country requests the Attorney-General to obtain the issue of a restraining order against the property;

the Attorney-General may authorise a proceeds of crime authority to apply for a restraining order against that property in respect of the offence.

34K Applying for and making restraining orders

- (1) If so authorised, a proceeds of crime authority may apply for such a restraining order against that property in respect of the offence.

Section 34L

- (2) Part 2-1 of the Proceeds of Crime Act applies to the application, and to any restraining order made as a result.
- (3) It applies as if:
- (a) references in that Part to an indictable offence were references to the foreign serious offence; and
 - (c) in a case to which subparagraph 34J(a)(i) applies:
 - (i) 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 foreign serious offence has commenced in a foreign country; and
 - (ii) references in that Part to it being proposed to charge a person with an indictable offence were a reference to it being reasonably suspected that criminal proceedings are about to commence in respect of a foreign serious offence against the person in a foreign country; and
 - (iii) 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; and
 - (d) in a case to which subparagraph 34J(a)(ii) applies in relation to a foreign country:
 - (i) references in that Part to reasonable grounds to suspect that a person has committed a serious offence were references to reasonable grounds to suspect that foreign confiscation proceedings have commenced, or are about to commence, in the foreign country; and
 - (ii) section 17, paragraphs 18(1)(e) and (f), subsection 18(3) and sections 19, 20, 29, 44 and 45 of that Act were omitted.

34L Excluding property from restraining orders

If:

- (a) a person (the *defendant*) has been alleged, in a criminal proceeding in a foreign country, to have committed a foreign serious offence; and

- (b) a court makes a restraining order under Part 2-1 of the Proceeds of Crime Act against property in respect of the offence; and
 - (c) 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:
- (d) in a case where the applicant is not the defendant:
 - (i) the applicant was not, in any way, involved in the commission of the offence; and
 - (ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the property was neither proceeds nor an instrument of the offence; or
 - (e) 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.

34M Cessation of restraining orders

- (1) A restraining order made in respect of a foreign serious offence as a result of an application under subsection 34K(1) ceases to have effect:
 - (a) at the end of the period of 30 days commencing on the day on which the order is made; or
 - (b) if the court that made the restraining order, on application made by the proceeds of crime authority authorised under section 34J before the end of the period referred to in paragraph (a), extends the period of operation of the order—at the end of the period as so extended.
- (2) However, the restraining order ceases to have effect upon the registration of a foreign restraining order against the property under Subdivision A if that registration occurs before the end of the period referred to in paragraph (1)(a) or (b) (as the case requires).

Subdivision C—Production orders relating to foreign serious offences

34P Applying for and making production orders

- (1) If an authorised officer has been authorised under section 34ZG of this Act in relation to a request by a foreign country, the authorised officer may apply for a production order under the Proceeds of Crime Act in relation to the foreign serious offence that is the subject of the request.
- (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 foreign serious offence; and
 - (c) subparagraphs 202(5)(a)(ii) and (c)(ii), paragraph 202(5)(e) and subsection 205(1) of that Act were omitted.

34Q Retaining produced documents

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

Subdivision D—Notices to financial institutions

34R Giving notices to financial institutions

- (1) An officer mentioned in paragraph 213(3)(a), (b) or (c) of the Proceeds of Crime Act may give a written notice to a financial institution requiring the institution to provide to an authorised

Section 34S

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 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.

34S 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

Section 34T

- (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 of the notice; and
- (f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 34V (disclosing existence or nature of a notice); and
- (g) set out the effect of section 34W (failing to comply with a notice).

34T 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 34R or in the mistaken belief that action was required under the notice.
- (2) A financial institution, or person who is an officer, employee or agent of a financial institution, who provides information under a notice under section 34R 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.

34U Making false statements in applications

A person commits an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
 - (i) is false or misleading; or

- (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, a notice under section 34R.

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

34V Disclosing existence or nature of notice

A person commits an offence if:

- (a) the person is given a notice under section 34R; and
- (b) the notice specifies 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.

34W Failing to comply with a notice

(1) A person commits an offence if:

- (a) the person is given a notice under section 34R; and
- (b) the person fails to comply with the notice.

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

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

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

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

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

Subdivision E—Monitoring orders relating to foreign serious offences

34Y Applying for and making monitoring orders

- (1) If an authorised officer has been authorised under section 34ZG of this Act in relation to a request by a foreign country, the authorised officer may apply for a monitoring order under the Proceeds of Crime Act in relation to the foreign serious offence that is the subject of the request, so long as the foreign serious offence is:
 - (a) an offence punishable by imprisonment for 3 or more years that:
 - (i) involves unlawful conduct relating to a narcotic substance; or
 - (ii) is a money laundering offence; or
 - (iii) involves unlawful conduct by a person that causes, or is intended to cause, a benefit to the value of at least \$10,000 for that person or another person; or
 - (iv) involves unlawful conduct by a person that causes, or is intended to cause, a loss to the foreign country in question or another person of at least \$10,000; or
 - (b) an offence involving the smuggling of migrants; or
 - (c) an offence involving failure to report financial transactions; or
 - (d) a cartel offence; or
 - (e) an offence involving terrorism; or
 - (f) an ancillary offence in respect of an offence referred to in paragraph (a), (b), (c), (d) or (e).
- (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 an offence of the kind referred to in paragraph (1)(a), (b), (c), (d), (e) or (f); and

Section 34Z

- (b) disclosing the existence or the operation of the order for the purpose of complying with a person's obligations under section 34Z of this Act were a purpose specified in subsection 223(4) of the Proceeds of Crime Act.

34Z Passing on information given under monitoring orders

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

- (a) the Attorney-General; or
- (b) an officer of the Attorney-General's Department specified by the Attorney-General by written notice to the enforcement agency.

Subdivision F—Search warrants relating to foreign serious offences

34ZB Applying for and issuing search warrants

- (1) If an authorised officer has been authorised under section 34ZG of this Act in relation to a request by a foreign country, the authorised officer may apply for a search warrant under the Proceeds of Crime Act in relation to the foreign serious offence that is the subject of the request.
- (2) Part 3-5 of the Proceeds of Crime Act applies to the application, and to any POCA search warrant issued as a result.
- (3) However, Part 3-5 of the Proceeds of Crime Act applies as if:
 - (a) a reference in that Part to tainted property were a reference to tainted property within the meaning of this Act; and
 - (b) a reference in that Part to evidential material were a reference to evidential material as defined in subsection 3(1) of this Act for the purposes of this Subdivision; and

Section 34ZC

- (c) the words “or section 34ZD, 34ZE or 34ZF of the Mutual Assistance Act” were inserted after “this Act” in paragraph 254(1)(a) of the Proceeds of Crime Act; and
- (d) paragraphs 227(1)(a), (b), (h) and (ha) and 228(1)(d) and (da) and sections 256 to 262 of the Proceeds of Crime Act were omitted.

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

34ZC Contents of POCA search warrants

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

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

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

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

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

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

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

34ZD Return of seized property to third parties

- (1) A person who claims an interest in property that has been seized under a POCA search warrant in relation to a foreign serious offence may apply to a court for an order that the property be returned to the person.

Section 34ZE

- (2) The court must be a court of the State or Territory in which the POCA search warrant was issued that has proceeds jurisdiction.
- (3) The court must order the responsible enforcement agency head to return the property to the applicant if the court is satisfied that:
 - (a) the applicant is entitled to possession of the property; and
 - (b) the property is not tainted property of the relevant foreign serious offence; and
 - (c) the person who is believed or alleged to have committed the relevant foreign serious offence has no interest in the property.
- (4) If the court makes such an order, the responsible enforcement agency head must arrange for the property to be returned to the applicant.
- (5) This section does not apply to property that has been seized under a POCA search warrant because:
 - (a) it is evidential material; or
 - (b) it is property of a kind referred to in subparagraph 34ZCA(a)(iv) or (v).

34ZE Dealing with certain seized property

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

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) neither a foreign restraining order, nor a foreign forfeiture order, in relation to the property has been registered in a court under Subdivision A; and
- (b) a restraining order has not been made under Subdivision B in respect of the property in relation to the foreign serious offence;

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

Effect of restraining orders being registered or obtained

- (3) If, before the end of that period:
 - (a) a foreign restraining order in relation to the property is registered in a court under Subdivision A; or
 - (b) a restraining order is made under Subdivision B in respect of the property in relation to the foreign serious offence;the responsible enforcement agency head:
 - (c) 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
 - (d) 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)(c), 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 responsible enforcement agency head:

Section 34ZF

- (a) a foreign restraining order in respect of the property has been registered in an Australian court under Subdivision A; or
- (b) a restraining order has been made under Subdivision B in respect of the property in relation to the foreign serious offence;

the responsible enforcement agency head 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 responsible enforcement agency head retain possession of the property.

- (6) If the court is satisfied that the responsible enforcement agency head requires the property to be dealt with in accordance with:
 - (a) a request under section 34 that the restraining order be registered; or
 - (b) a request under section 34J that the restraining order be obtained;

the court may make an order that the responsible enforcement agency head may retain the property for so long as the property is so required.

Effect of foreign forfeiture orders being registered or obtained

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

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

- (1) This section applies if:
 - (a) property or a thing (the *seized item*) is seized under a POCA search warrant in relation to a foreign serious offence; and
 - (b) the seized item is:
 - (i) evidential material; or

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

Subdivision G—Authorisation of authorised officers

34ZG Attorney-General may authorise authorised officers

If:

- (a) a proceeding or investigation relating to a criminal matter involving a foreign serious offence has commenced in a foreign country; and
- (b) the foreign country requests assistance in relation to the proceeding or investigation; and
- (c) such assistance may be obtained under the Proceeds of Crime Act in the form of a production order, search warrant or monitoring order;

then, the Attorney-General may authorise an authorised officer of an enforcement agency to make any applications under that Act that are necessary to respond to the request by the foreign country.

Division 3—Provisions relating to registered foreign restraining orders

35 Court may order Official Trustee to take custody and control of property

The court that registers a foreign restraining order under Subdivision A of Division 2 may order the Official Trustee to take custody and control of all or a specified part of property covered by the restraining order if:

- (a) the proceeds of crime authority authorised under section 34 applies for the order; and
- (b) the court is satisfied that it is required in the circumstances.

35A Procedural matters

- (1) A proceeds of crime authority that applies for an order under section 35 in respect of property must give written notice of the application to:
 - (a) the owner of the property; and
 - (b) any other person the authority has reason to believe may have an interest in the property.
- (2) The court may, at any time before finally determining the application, direct the proceeds of crime authority to give or publish notice of the application:
 - (a) to a specified person or class of persons; and
 - (b) in the manner and within the time that the court considers appropriate.
- (3) A person who claims an interest in property in respect of which the application is made may appear and adduce evidence at the hearing of the application.

35B Ancillary orders

The court that makes an order under section 35 in relation to property may at any time make orders ancillary to the order, including any one or more of the following:

- (a) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the order;
- (b) an order determining any question relating to the property, including a question relating to the liabilities of the owner of the property or the exercise of the powers or the performance of the duties of the Official Trustee in relation to the property;
- (c) an order directing the owner to give to the Official Trustee, within a specified period, a statement, verified on oath or affirmation by the owner, setting out such particulars of the property as the court considers appropriate.

35C Dealing with restrained property

- (1) Division 3 of Part 4-1 of the Proceeds of Crime Act applies to the property as if the property were controlled property within the meaning of that Act.
- (2) However, the Official Trustee must, before exercising a power under section 278 of the Proceeds of Crime Act in relation to the property, consult with the foreign country that made the request under section 34 relating to the foreign restraining order covering the property.

35D Money not to be paid into the Common Investment Fund

Money that is in the custody or control of the Official Trustee because of a foreign restraining order must not be paid into the Common Investment Fund under section 20B of the *Bankruptcy Act 1966* (despite anything in that Act).

Section 35E

35E Undertakings

The court that:

- (a) registers a foreign restraining order against property under Subdivision A of Division 2; or
- (b) makes an order under section 35 in relation to property; may, upon application of a person who claims an interest in the property, make an order as to the giving or carrying out of an undertaking, on behalf of the Commonwealth by the proceeds of crime authority authorised under section 34, with respect to payment of damages or costs relating to the registration, making or operation of the order.

35F Order to discharge certain registered foreign pecuniary penalty orders

- (1) If:
 - (a) a foreign restraining order is made against property of a person in reliance on the person's conviction, or alleged commission, of a foreign serious offence; and
 - (b) the foreign restraining order is registered under Subdivision A of Division 2; and
 - (c) a foreign pecuniary penalty order has been made against the person in relation to the person's conviction, or alleged commission, of the offence or a related foreign serious offence; and
 - (d) the foreign pecuniary penalty order has been registered under Subdivision A of Division 2; and
 - (e) an order has been made under section 35 ordering the Official Trustee to take control of the property;the court in which the foreign pecuniary penalty order is registered may, by order, direct the Official Trustee to pay to the Commonwealth an amount out of that property.
- (2) The amount is to be the amount that would be the penalty amount under the Proceeds of Crime Act if the foreign pecuniary penalty order were a pecuniary penalty order under that Act.

- (3) For the purposes of enabling the Official Trustee to comply with the order under subsection (1), the court may, in that order or by a subsequent order:
- (a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the court specifies; and
 - (b) appoint an officer of the court or any other person:
 - (i) to execute any deed or instrument in the name of a person who owns or has an interest in the property; and
 - (ii) to do any act or thing necessary to give validity and operation to the deed or instrument.
- (4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the interest in the property.

35G Official Trustee to carry out orders

- (1) As soon as practicable after an order is made under subsection 35F(1) covering property that is money, the Official Trustee must:
- (a) apply the money in payment of the costs payable to the Official Trustee, under section 288 of the Proceeds of Crime Act, in respect of the order under section 35 in respect of the property; and
 - (b) subject to subsection (3), credit the remainder of the money to the Confiscated Assets Account as required by section 296 of that Act.
- (2) As soon as practicable after an order is made under subsection 35F(1) covering property that is not money, the Official Trustee must:
- (a) sell or otherwise dispose of the property;
 - (b) apply the proceeds of the sale or disposition in payment of the costs payable to the Official Trustee, under section 288 of the Proceeds of Crime Act, in respect of the order in respect

Section 35H

- of the property (including expenses incurred in connection with selling or disposing of the property); and
- (c) subject to subsection (3), credit the remainder of the proceeds to the Confiscated Assets Account as required by section 296 of the Proceeds of Crime Act.
- (3) If the money or proceeds to which paragraph (1)(b) or (2)(c) applies exceeds the amount payable to the Commonwealth under the order under subsection 35F(1):
- (a) the amount to be credited under that paragraph is the amount payable to the Commonwealth under the order; and
- (b) the Official Trustee must pay an amount equal to the excess to the person whose property was covered by the order under section 35.

35H Discharge of person's liability under foreign pecuniary penalty order

A person's liability under a foreign pecuniary penalty order is taken to be discharged to the extent that the Official Trustee credits money to the Confiscated Assets Account, as required by section 296 of the Proceeds of Crime Act, in satisfaction of the person's liability under the order.

35J Creation of charge on property

- (1) If:
- (a) a foreign restraining order against property has been registered under Subdivision A of Division 2; and
- (b) a foreign pecuniary penalty order has been made against the person in reliance on the person's conviction, or alleged commission, of:
- (i) the foreign serious offence in relation to which the foreign restraining order was made; or
- (ii) a related foreign serious offence; and
- (c) the foreign pecuniary penalty order has been registered under Subdivision A of Division 2;

the registration of the foreign restraining order or the foreign pecuniary penalty order (whichever last occurs) creates, by force of this section, a charge on the property to secure the payment of an amount to the Commonwealth.

- (2) The amount is to be the amount that would be the penalty amount under the Proceeds of Crime Act if the foreign pecuniary penalty order were a pecuniary penalty order under that Act.
- (3) The charge:
- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to section 35K, is not affected by any change of ownership of the property.
- (4) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges created by this section after the commencement of subsection (4) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

35K When the charge ceases to have effect

The charge ceases to have effect in respect of the property on the earliest of the following events:

- (a) the payment to the Commonwealth of the amount under subsection 35J(2) in relation to the foreign pecuniary penalty order;
- (b) the sale or other disposition of the property:
 - (i) under an order under subsection 35F(3); or

Section 35L

- (ii) by the owner of the property with the consent of the court in which the foreign pecuniary penalty order is registered; or
- (iii) if an order under section 35 ordered the Official Trustee to take control of the property—by the owner of the property with the consent of the Official Trustee;
- (c) the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;
- (d) the cancellation of the registration of the relevant foreign restraining order or foreign pecuniary penalty order under section 34G.

35L Registering charges

- (1) A registration authority that keeps a register of property of a particular kind may record in the register a charge created by section 35J on property of that kind.
- (2) The registration authority may only do so on the application of the proceeds of crime authority authorised under section 34 or the Official Trustee.
- (3) Each person who subsequently deals with the property is taken to have notice of the charge for the purposes of paragraph 35K(c).
- (4) In this section:

registration authority, in relation to property of a particular kind, means:

- (a) an authority responsible for administering a law of the Commonwealth, a State or a Territory providing for registration of title to, or charges over, property of that kind; or
- (b) the Registrar of Personal Property Securities, if the *Personal Property Securities Act 2009* provides for the registration of data in relation to that kind of personal property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data if regulations are made for the purposes of paragraph 148(c) of that Act.

35M When order ceases to be in force

A foreign restraining order registered under Subdivision A of Division 2 ceases to be in force when the registration is cancelled under section 34G.

Part VIIA—Search, seizure and powers of arrest

Division 1—General

38A Object of Part

This Part makes provision:

- (a) for the issue and execution in Australia, at the request of a foreign country, of a search warrant in respect of evidential material in Australia relating to an investigation or proceeding in the foreign country that relates to a criminal matter involving a serious offence; and
- (b) for matters relating to the arrest of a person when the arrest has been authorised by this Act or by a warrant issued under the regulations.

Division 2—Issue of search warrants

38B Application for search warrant

- (1) This section applies if a police officer has been authorised under section 15 to apply for a search warrant in respect of evidential material relating to an investigation or proceeding in a foreign country that relates to a criminal matter involving a serious offence.
- (2) If the police officer has reasonable grounds for suspecting that the evidential material:
- (a) is on any particular premises; or
 - (b) will, within the applicable period, be on any particular premises;
- the police officer may, by an information on oath or affirmation setting out the grounds for that suspicion, apply for a warrant to search those premises for the evidential material.
- Note: For *applicable period* see subsection (4).
- (3) If the police officer has reasonable grounds for suspecting that a person:
- (a) is in possession of the evidential material; or
 - (b) will, within the applicable period, be in possession of the evidential material;
- the police officer may, by an information on oath or affirmation setting out the grounds for that suspicion, apply for a warrant to search that person for the evidential material.
- Note: For *applicable period* see subsection (4).
- (4) In this section:
- applicable period* means:
- (a) if the application for the warrant is made by telephone, telex, fax or any other electronic means, as provided by section 38H—48 hours; or

Section 38C

(b) in any other case—72 hours.

38C When search warrants may be issued

(1) If the Magistrate or eligible Federal Circuit Court Judge is satisfied, on the information, that there are reasonable grounds for suspecting that the evidential material:

- (a) is on any particular premises; or
- (b) will, within the applicable period, be on any particular premises;

the Magistrate or Judge may issue a warrant to search the premises.

Note: For *applicable period* see subsection (3).

(2) If the Magistrate or eligible Federal Circuit Court Judge is satisfied, on the information, that there are reasonable grounds for suspecting that a person:

- (a) is in possession of the evidential material; or
- (b) will, within the applicable period, be in possession of the evidential material;

the Magistrate or Judge may issue a warrant authorising an ordinary search or a frisk search of the person.

Note: For *applicable period* see subsection (3).

(3) In subsections (1) and (2):

applicable period means:

- (a) if the application for the warrant is made by telephone, telex, fax or any other electronic means, as provided by section 38H—48 hours; or
- (b) in any other case—72 hours.

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

(5) If the police officer applying for the warrant:

Section 38D

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

38D Content of warrants

- (1) If the Magistrate or eligible Federal Circuit Court Judge issues a search warrant, the Magistrate or Judge is to state in the warrant:
 - (a) the purpose for which it is issued, including a reference to the nature of the criminal matter to which the relevant proceeding or investigation 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) a description of the evidential material that is to be searched for and seized under the warrant; and

Section 38D

- (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) in the case of a warrant issued on an application by telephone, telex, fax or other electronic means as provided by section 38H—48 hours; or
 - (ii) in any other case—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) If the warrant relates to premises, the Magistrate or eligible Federal Circuit Court Judge is also to state in the warrant:
- (a) that the warrant authorises the seizure of any thing (other than the evidential material 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 relating to the relevant proceeding or investigation; 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 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 in his or her possession any evidential material relating to the relevant proceeding or investigation or any seizable items.

Section 38E

- (4) If the warrant relates to a person, the Magistrate or eligible Federal Circuit Court Judge is also to state in the warrant:
- (a) the kind of search (ordinary or frisk) of the person that the warrant authorises; and
 - (b) that the warrant authorises the seizure of any thing (other than the evidential material referred to in paragraph (1)(c)) found, in the course of the search, in the possession of the person or in or on a vehicle recently used by the person, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material relating to the relevant proceeding or investigation; 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 an indictable offence against an Australian law.

38E 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 to do any of the following:
- (a) to enter the premises (in the case of a vehicle, wherever it may be);
 - (b) to search the premises for the evidential material specified in the warrant, and to seize such material if found at the premises;
 - (c) to seize other things that are found at the premises in the course of the search and that the executing officer or an officer assisting believes on reasonable grounds to be:
 - (i) evidential material relating to the relevant proceeding or investigation; or

Section 38F

- (ii) things relevant to an indictable offence against an Australian law;
if the executing officer or 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 an indictable offence against an Australian law;
 - (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 seizable items;
 - (e) 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 in his or her possession any evidential material relating to the relevant proceeding or investigation or any seizable items.
- (2) If the warrant states that it may be executed only during particular hours, it must not be executed outside those hours.

38F 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 to do any of the following:
- (a) to:
 - (i) search the person in the manner specified in the warrant;
and
 - (ii) search things found in the possession of the person; and
 - (iii) search any vehicle recently used by the person;
for the evidential material specified in the warrant;
 - (b) to seize such evidential material if found in the course of the search;
 - (c) to seize other things that are found, in the course of the search, in the possession of the person or in or on any vehicle recently used by the person and that the executing officer or an officer assisting believes on reasonable grounds to be:

- (i) evidential material relating to the relevant proceeding or investigation; or
 - (ii) things relevant to an indictable offence against an Australian law;
if the executing officer or 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 an indictable offence against an Australian law;
 - (d) to seize other things found in the course of the search that the executing officer or a police officer assisting believes on reasonable grounds to be seizable items.
- (2) If the warrant states that it may be executed only during particular hours, it must not be executed outside those hours.
- (3) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

38G Restrictions on personal searches

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

38H Warrants may be issued by telephone etc.

- (1) A police officer may apply to a Magistrate or eligible Federal Circuit Court Judge 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 or Judge may require communication by voice to the extent that is practicable in the circumstances.
- (3) In making the application, the police officer must give to the Magistrate or Judge all the information required to be provided in an application for the issue of a warrant under section 38C, but the

Section 38I

application may, if necessary, be made before the information is sworn.

- (4) If an application is made to a Magistrate or eligible Federal Circuit Court Judge under this section and the Magistrate or Judge, after considering the information and having received and considered such further information (if any) as the Magistrate or Judge 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 or Judge may complete and sign the same form of warrant that would be issued under section 38C.

38I Formalities relating to warrants issued by telephone etc.

- (1) If the Magistrate or eligible Federal Circuit Court Judge decides to issue the warrant under section 38H, the Magistrate or Judge 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 or Judge, stating on the form the name of the Magistrate or Judge and the day on which and the time at which the warrant was signed.
- (3) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the Magistrate or Judge:
- (a) the form of warrant completed by the applicant; and
 - (b) if the information referred to in subsection 38H(3) was not sworn—that information duly sworn.

Section 38I

- (4) The Magistrate or Judge is to attach to the documents provided under subsection (3) the form of warrant completed by the Magistrate or Judge.
- (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 38H was duly authorised; and
 - (b) the form of warrant signed by the Magistrate or Judge 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 3—Execution of search warrants

38J 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 police officer who is assisting in executing the warrant, may use such force against persons and things; and
- (c) a person who is not a police officer and who has been authorised to assist in executing the warrant may use such force against things;

as is necessary and reasonable in the circumstances.

38K Copy of warrant to be shown to occupier etc.

- (1) If:
 - (a) a search warrant in relation to premises is being executed; and
 - (b) 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 a copy of the warrant available to that person.
- (2) If a search warrant in relation to a person is being executed, the executing officer or an officer assisting must make a copy of the warrant available to that person.
- (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:
 - (a) the person present at the premises; or
 - (b) the person being searched;as the case requires.

- (5) The copy of the warrant referred to in subsection (1), (2) or (3) need not include the signature of the Magistrate or eligible Federal Circuit Court Judge who issued it.

38L Specific powers available to officers executing warrants

- (1) When executing a search warrant in relation to premises, the executing officer or an officer assisting may:
- (a) for a purpose incidental to the execution of the warrant; or
 - (b) with the written consent of the occupier of the premises; photograph, film or videorecord the premises or things at the premises.
- (2) The executing officer of a warrant in relation to premises and the officers assisting (if any) may not resume and complete the execution of the warrant if they:
- (a) cease to execute the warrant; and
 - (b) leave the premises for a period of more than one hour without the written consent of the occupier of the premises.
- (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;
- the execution of the warrant may be completed if the warrant is still in force.

38M Use of equipment to examine or process things

- (1) For the purpose of executing a warrant in relation to premises, the executing officer or an officer assisting may bring to the premises any equipment reasonably necessary to examine or process 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 premises; or

Section 38N

- (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.
- (3) If things are moved to another place for the purpose of examination or processing, the executing officer must, if it is practicable to do so:
 - (a) inform the occupier of the premises of:
 - (i) the address of that place; and
 - (ii) the day on which 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 officer assisting may operate equipment already at the premises to examine or process a thing found at the premises in order to determine whether it may be seized under the warrant, if the executing officer or 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 damaging the equipment or thing.

38N Use of electronic equipment at premises

- (1) The executing officer of a warrant in relation to premises or an officer assisting may operate electronic equipment at the 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 damaging the equipment.
- (2) If the executing officer or officer assisting finds that evidential material is accessible by operating the equipment, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or

- (b) if the material can be put in a documentary form by using facilities at the premises—operate those 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 officer assisting believes on reasonable grounds that:
- (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) the material may be destroyed, altered or otherwise interfered with if he or she does not take action under this subsection;
- he or she may do whatever is necessary to secure the equipment, including locking it up or placing it under guard.
- (5) 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.
- (6) The executing officer or officer assisting must give to the occupier of the premises notice of his or her intention to secure equipment

Section 38O

and of the fact that the equipment may be secured for up to 24 hours.

- (7) If the executing officer or 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 or eligible Federal Circuit Court Judge who issued the warrant for an extension of that period.
- (8) The executing officer or 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 2 applies, with such modifications as are necessary, to the issuing of an extension.

38O Compensation for damage to electronic equipment

- (1) If:
 - (a) damage is caused to equipment as a result of its being operated as mentioned in section 38M or 38N; and
 - (b) the damage was caused as a result of:
 - (i) a lack of reasonable care in selecting the person who was to operate the equipment; or
 - (ii) a lack of reasonable care on the part of the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or his or her employees or agents could have provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances but failed to do so.

38P 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 premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing was seized under paragraph 38N(2)(b) or taken under paragraph 38N(2)(c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against an Australian law.

38Q Occupier entitled to watch search

- (1) If:
 - (a) a warrant in relation to premises is being executed; and
 - (b) the occupier of the premises or another person who apparently represents the occupier is present at the premises;the occupier of the premises or that person is entitled to watch the search being conducted.
- (2) The right to watch 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.

Section 38R

38R Receipts for things seized under warrant etc.

- (1) If a thing is seized under a warrant or moved under subsection 38M(2), the executing officer or an officer assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

Division 4—Arrest and related matters**38S Power to enter premises to arrest person**

- (1) Subject to subsection (2), if:
 - (a) a police officer has, under this Act or under a warrant issued under the regulations, 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, at any time of the day or night, enter the premises for the purpose of searching the premises for the person or arresting the person. In doing so, the police officer may use such force as is necessary and reasonable in the circumstances.
- (2) A police officer must not enter a dwelling house 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 it will not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time.
- (3) In subsection (2):

dwelling house includes:

 - (a) a vehicle; or
 - (b) a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

38T Use of force in making arrest

- (1) In exercising powers of arrest under section 38S, a police officer must not use more force, or subject the person being arrested to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the person after the arrest.
- (2) Without limiting subsection (1), a police officer must not, in the course of arresting a person:

Section 38U

- (a) if paragraph (b) does not apply—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 a human 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 anything that is likely to cause the death of, or grievous bodily harm to, the person unless:
 - (i) the police officer believes on reasonable grounds that doing that thing is necessary to protect a human life or to prevent serious injury to another person (including the police officer); or
 - (ii) the person has, if practicable, been called on to surrender and the police officer believes on reasonable grounds that the person cannot be arrested in any other manner.

38U Persons to be informed of grounds of arrest

- (1) When arresting a person, the police officer must inform the person of the reason for the arrest.
- (2) It is sufficient if the person is informed of the substance of the 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 person if:
 - (a) the person should, in the circumstances, know the reason for the arrest; or
 - (b) the person's actions make it impracticable for the police officer to inform the person of the reason for the arrest.

38V Power to search an arrested person

- (1) The police officer arresting the person, or any police officer who is present at the arrest, may:

Section 38V

- (a) if he or she believes on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items—conduct a frisk search of the person at, or soon after, the time of arrest; or
 - (b) if he or she suspects on reasonable grounds that the person is carrying any seizable items—conduct an ordinary search of the person at, or soon after, the time of the arrest.
- (2) The police officer may seize any seizable items found as a result of the search.

Division 5—General

38W 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 that of 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.

38X 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.

38Y Offence for making false statements in warrants

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

Penalty: Imprisonment for 2 years.

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

38Z Offences relating to telephone warrants

A person must not:

- (a) state the name of a Magistrate or eligible Federal Circuit Court Judge in a document that purports to be a form of warrant under section 38H unless that Magistrate or Judge 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 Judge; 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 or eligible Federal Circuit Court Judge under that section; or
 - (ii) the person knows to depart in a material particular from the terms authorised by a Magistrate or eligible Federal Circuit Court Judge under that section; or
- (d) send to a Magistrate or eligible Federal Circuit Court Judge a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

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

38ZA Retention of things seized

- (1) Subject to subsection (2), if a police officer seizes a thing while executing a warrant issued under Division 2, he or she must:
 - (a) inform the Attorney-General that the thing has been so seized; and
 - (b) retain the thing pending the Attorney-General's direction under subsection (4) about how to deal with the thing; and

Section 38ZB

- (c) comply with any such direction that the Attorney-General gives.
- (2) If the thing seized is not evidential material relating to the proceeding or investigation relevant to the warrant, the police officer may make the thing available to officers of the police force of a State or Territory for the purpose of investigating or prosecuting an offence to which the thing relates.
- (4) The Attorney-General may, by written notice, give the police officer a direction about how to deal with the thing.
- (5) Without limiting the directions that may be given, a direction may require the police officer to send the thing to a foreign country.
- (6) The Attorney-General must direct the police officer 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 in a foreign country or in respect of a criminal proceeding in Australia;unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

38ZB Arrest of person released on bail

- (1) If:
 - (a) a person arrested under a warrant issued under the regulations has been released on bail by order of a Magistrate or eligible Federal Circuit Court Judge; and
 - (b) a 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;the police officer may, without warrant, arrest the person.
- (2) A person arrested under subsection (1) must, as soon as practicable, be brought before a Magistrate or eligible Federal Circuit Court Judge.

Part VIII—Miscellaneous**38ZC Federal Circuit Court Judges—consent to nomination**

- (1) A Judge of the Federal Circuit Court of Australia may, by writing, consent to be nominated by the Attorney-General under subsection (2).
- (2) The Attorney-General may, by writing, nominate a Judge of the Federal Circuit Court of Australia in relation to whom a consent is in force under subsection (1) to be an eligible Federal Circuit Court Judge for the purposes of this Act.
- (3) A nomination under subsection (2) is not a legislative instrument.

38ZD Magistrates and Federal Circuit Court Judges—personal capacity

- (1) A function or power conferred on a Magistrate or eligible Federal Circuit Court Judge by this Act is conferred on the Magistrate or Judge:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.
- (2) A Magistrate need not accept a function or power conferred.
- (3) A Magistrate or eligible Federal Circuit Court Judge has, in relation to the performance or exercise of a function or power conferred on the Magistrate or Judge by this Act, the same protection and immunity as if he or she were exercising that function or power as, or as a member of, the court of which the Magistrate or Judge is a member.

39 Arrangements with Governors of States

- (1) The Governor-General may make arrangements with the Governor of a State with respect to the administration of this Act, including

Section 39A

arrangements for the performance of the functions of a Magistrate under this Act by a Magistrate of that State.

- (2) The Governor-General may arrange with the Governor of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.
- (3) A copy of each instrument by which an arrangement under this section is made, varied or revoked shall be published in the *Gazette*.

39A Requests by Attorney-General on behalf of a defendant

- (1) If a defendant in a proceeding relating to a criminal matter thinks that it is necessary for the purposes of the proceeding that:
 - (a) evidence should be taken in a foreign country; or
 - (b) a document or other article in a foreign country should be produced; or
 - (c) a thing located in a foreign country should be seized; or
 - (d) arrangements should be made for a person who is in a foreign country to come to Australia to give evidence relevant to the proceeding;the defendant may apply to the relevant court (see subsection (1A)) for a certificate that it would be in the interests of justice for the Attorney-General to make any appropriate request to the foreign country under Part II, III or IV so that:
 - (e) the evidence may be taken; or
 - (f) the document or article may be produced; or
 - (g) the thing may be seized; or
 - (h) the arrangements may be made.
- (1A) For the purposes of subsection (1), the *relevant court* is:
 - (a) if the proceeding is being heard in the Federal Court of Australia—that Court; or
 - (b) otherwise—the Supreme Court of the State or Territory in which the proceeding is being heard.

Section 39A

- (2) Before making a decision on the application, the court must give an opportunity to:
- (a) all parties to the proceeding; and
 - (b) the Attorney-General;
- to appear before the court and be heard on the merits of the application.
- (3) In deciding whether to issue a certificate, the court must have regard to the following matters:
- (a) whether the foreign country is likely to grant such a request made by the Attorney-General on behalf of the defendant;
 - (b) the extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
 - (c) whether the court hearing the proceeding would be likely to admit the material into evidence in the proceeding;
 - (d) the likely probative value of the material, if it were admitted into evidence in the proceeding, with respect to any issue likely to be determined in the proceeding;
 - (e) whether the defendant would be unfairly prejudiced if the material were not available to the court.
- (4) Subsection (3) does not prevent the court from having regard to any other matter that it considers relevant.
- (5) If the court issues a certificate:
- (a) the court must send a copy of the certificate to the Attorney-General; and
 - (b) the Attorney-General must, in accordance with the certificate, make a request on behalf of the defendant to the foreign country for international assistance unless he or she is of the opinion, having regard to the special circumstances of the case, that the request should not be made.

Section 39B

39B Certificate by Attorney-General if foreign country refuses request made under section 39A

- (1) If a foreign country refuses a request made under subsection 39A(5), the Attorney-General must give a certificate in writing to that effect.
- (2) A certificate under subsection (1) is prima facie evidence of the facts stated in it.

40 Delegation

The Attorney-General may (including his or her powers under section 10) delegate to an officer of the Attorney-General's Department all or any of his or her powers under this Act.

41 Jurisdiction of courts

A matter arising under a mutual assistance treaty shall, for the purposes of section 38 of the *Judiciary Act 1903*, be deemed not to be a matter arising directly under a treaty.

42 Evidence

A certificate by the Attorney-General stating that:

- (a) Australia or a specified foreign country is a party to a specified treaty;
 - (b) a specified treaty entered into force for Australia or a specified foreign country on a specified day; or
 - (c) on a day specified in the certificate, a specified treaty remained in force for Australia or a specified foreign country;
- is, for the purpose of any proceedings under this Act, prima facie evidence of the matters stated in the certificate.

43 Authentication of documents

- (1) In a proceeding under this Act or a proceeding under or pursuant to a proceeds of crime law arising directly or indirectly from a request

made under this Act, any document that is duly authenticated is admissible in evidence.

- (2) A document is duly authenticated for the purposes of subsection (1) if it purports to be signed or certified by a Judge, Magistrate or officer in or of a foreign country.
- (3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of the Commonwealth or any law of a State or Territory.

43A Admissibility of certain documents—requests under the Money-Laundering Convention

- (1) In any proceeding arising directly or indirectly from a request made by a foreign country for international assistance in a criminal matter (including a proceeding under a proceeds of crime law), a document is admissible in evidence if the Attorney-General provides a certificate stating that the document was provided by a specified Party to the Money-Laundering Convention, in connection with a request for assistance of the type covered by the Convention.
- (2) The regulations may specify the Parties to the Money-Laundering Convention for the purposes of subsection (1).

43B Restriction on use of information etc.

- (1) If, as a result of a request made by the Attorney-General under this Act, any material (whether it is evidence, a document, an article or a thing) has been sent to Australia by a foreign country for the purposes of a proceeding or investigation in relation to a criminal matter, the material is not to be used intentionally for any other purpose without the approval of the Attorney-General.
- (2) The material is inadmissible in evidence in any proceeding other than the proceeding in respect of which it was obtained unless the Attorney-General has approved its use for the purposes of that other proceeding.

Section 43C

- (3) Any information, document, article or thing obtained directly or indirectly from a person by making use of the material:
- (a) otherwise than for the purposes of the proceeding or investigation in respect of which it was obtained; and
 - (b) without the approval of the Attorney-General;
- is inadmissible in evidence in any other proceeding and may not be used for the purposes of any other investigation.
- (4) Any person who contravenes subsection (1) commits an offence punishable, on conviction, by a term of imprisonment not exceeding 2 years.
- Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.
- (5) For the purposes of this section, disclosure of any material is taken to be a use of that material.

43C Requests for international assistance not to be disclosed

A person who, because of his or her office or employment, has knowledge of:

- (a) the contents of a request for international assistance made by a foreign country to Australia under this Act; or
 - (b) the fact that such a request has been made; or
 - (c) the fact that such a request has been granted or refused;
- must not intentionally disclose those contents or that fact except if:
- (d) it is necessary to do so in the performance of his or her duties; or
 - (e) the Attorney-General has given his or her approval to the disclosure of those contents or that fact.

Penalty: Imprisonment for 2 years.

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

43D Collection, use or disclosure of personal information for international assistance purposes—the *Privacy Act 1988*

- (1) The collection, use or disclosure of personal information about an individual is taken to be authorised by this Act for the purposes of the *Privacy Act 1988* if the collection, use or disclosure is reasonably necessary for the purposes of:
- (a) the provision, or proposed provision, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, to a foreign country; or
 - (b) the obtaining, or proposed obtaining, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, from a foreign country.
- (2) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

44 Regulations

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

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

and, in particular:

- (c) prescribing the practice and procedure in relation to the performance by Magistrates or eligible Federal Circuit Court Judges of functions under this Act, including the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, the administering of oaths or affirmations, the payment of expenses and allowances of witnesses and the protection and immunity of barristers and solicitors appearing before Magistrates or eligible Federal Circuit Court Judges and of witnesses; and
- (d) prescribing penalties not exceeding 10 penalty units for offences against the regulations.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

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

Legislation history and amendment history—Endnotes 3 and 4

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

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

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

Editorial changes

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

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

Misdescribed amendments

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

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

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

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Mutual Assistance in Criminal Matters Act 1987	85, 1987	5 June 1987	s 1 and 2: 5 June 1987 (s 2(1)) Remainder: 1 Aug 1988 (s 2(2) and gaz 1988, No S225)	
Crimes Legislation Amendment Act (No. 2) 1988	66, 1988	15 June 1988	s 12: 15 June 1988 (s 2(1)) s 13–19: 1 Dec 1988 (s 2(3) and gaz 1988, No S366)	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	s 44–46: 14 Dec 1988 (s 2(1)) s 47: 5 Sept 1989 (s 2(9) and gaz 1989, No S296)	—
Crimes Legislation Amendment Act (No. 2) 1991	123, 1991	23 Aug 1991	s 32–34: 20 Sept 1991 (s 2(2))	—
Cash Transaction Reports Amendment Act 1991	188, 1991	6 Dec 1991	s 18–22: 6 Dec 1992 (s 2(2) and gaz 1992, No GN25)	s 22
Crimes Legislation Amendment Act 1992	164, 1992	11 Dec 1992	s 44–46: 8 Jan 1993 (s 2(1))	—
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	s 31: 19 Dec 1994 (s 2(3))	—
Mutual Assistance in Criminal Matters Legislation Amendment Act 1996	40, 1996	9 Oct 1996	Sch 1: 1 Mar 1997 (s 2(2) and gaz 1997, No S50)	Sch 1 (item 101)

Mutual Assistance in Criminal Matters Act 1987

125

Compilation No. 38

Compilation date: 9/12/18

Registered: 13/12/18

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Amendment (Forensic Procedures) Act 2001	22, 2001	6 Apr 2001	Sch 2: 6 Apr 2001 (s 2(1))	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2): and Sch 36: 24 May 2001 (s 2(1))	s 4(1), (2)
International Criminal Court (Consequential Amendments) Act 2002	42, 2002	27 June 2002	Sch 5: 26 Sept 2002 (s 2(1) item 2)	—
Suppression of the Financing of Terrorism Act 2002	66, 2002	5 July 2002	Sch 2 (item 22): 5 July 2002 (s 2(1) item 5)	—
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Sch 2 (items 6–37: 1 Jan 2003 (s 2(1) item 2)	—
Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004	127, 2004	31 Aug 2004	Sch 5 (items 10–16): 28 Sept 2004 (s 2(1) item 6)	—
Surveillance Devices Act 2004	152, 2004	15 Dec 2004	Sch 1 (item 7): 15 Dec 2004 (s 2)	—
Telecommunications (Interception) Amendment Act 2006	40, 2006	3 May 2006	Sch 1 (item 22): 13 June 2006 (s 2(1) item 2)	—
Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009	106, 2009	6 Nov 2009	Sch 1 (items 109, 110): 4 Dec 2009 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Sch 3 (items 3, 4): 30 Jan 2012 (s 2(1) item 10)	—
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Sch 2 (items 26, 27): 3 Mar 2011 (s 2(1) item 4)	—
Mutual Assistance in Criminal Matters Amendment (Registration of Foreign Proceeds of Crime Orders) Act 2011	83, 2011	25 July 2011	Sch 1 (items 5–9): 25 July 2011 (s 2)	Sch 1 (items 8, 9)
Crimes Legislation Amendment Act (No. 2) 2011	174, 2011	5 Dec 2011	Sch 2 (items 218–239): 1 Jan 2012 (s 2(1) item 5)	Sch 2 (item 239)
Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012	7, 2012	20 Mar 2012	Sch 1 (items 7–11, 14), Sch 3 (items 1–41, 49, 69, 106–168) and Sch 4 (item 2): 20 Sept 2012 (s 2(1) items 2, 6, 10, 12) Sch 3 (item 50): never commenced (s 2(1) item 7) Sch 4 (item 3): 10 Oct 2012 (s 2(1) item 13)	Sch 3 (items 15, 24, 33, 49, 69, 113, 135, 140, 144, 148, 152, 168)
Cybercrime Legislation Amendment Act 2012	120, 2012	12 Sept 2012	Sch 2 (items 1–4, 24–27, 51(1), 52): 10 Oct 2012 (s 2(1) item 2)	Sch 2 (items 24, 51(1), 52)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 86–88): 22 Sept 2012 (s 2(1) item 2)	—

Mutual Assistance in Criminal Matters Act 1987

127

Compilation No. 38

Compilation date: 9/12/18

Registered: 13/12/18

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 57) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	12 Apr 2013	Sch 1 (items 351–417): 12 Apr 2013 (s 2(1) item 2)	Sch 1 (item 417)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (items 30, 31): 24 June 2014 (s 2(1) item 9)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 255–260): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 389): 5 Mar 2016 (s 2(1) item 2)	—
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 14 (items 9, 10) and Sch 15 (item 8–10): 27 Nov 2015 (s 2(1) items 2, 3)	Sch 14 (item 10)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 215, 216): 10 Mar 2016 (s 2(1) item 6)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 30, 31, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (item 58): 21 Oct 2016 (s 2(1) item 1)	—
Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018	34, 2018	22 May 2018	Sch 2 (items 1–23, 29–40): 23 May 2018 (s 2(1) items 3, 5) Sch 2 (items 24–28): 22 Nov 2018 (s 2(1) item 4)	Sch 2 (items 23, 28, 40)
Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018	148, 2018	8 Dec 2018	Sch 2 (items 25, 26): 9 Dec 2018 (s 2(1) item 4)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 3	am. No. 66, 1988; No. 164, 1992; No. 40, 1996; No. 22, 2001; No. 86, 2002; No. 174, 2011; No 7, 2012; No 120, 2012; No 136, 2012; No 13, 2013; No 31, 2014; No 59, 2015; No 153, 2015; No 26, 2016; No 34, 2018; No 148, 2018
s 4A	ad No 24, 2001
s 5	rs No 40, 1996 am No 7, 2012
s 6	rs No 40, 1996
s 7	am No 123, 1991; No 188, 1991; No 182, 1994 rs No 40, 1996
s 8	am No 66, 1988; No 40, 1996; No 7, 2012
s 10	rs No 40, 1996
s 11	am No 40, 1996
Part II	
Division 1	
Division 1 heading	ad No 7, 2012
s 12	rs No 40, 1996 am No 7, 2012
Division 2	
Division 2 heading	ad No 7, 2012
s 13	am No 66, 1988; No 120, 1988; No 40, 1996; No 152, 2004; No 7, 2012; No 13, 2013; No 34, 2018
s 13AA	ad No 7, 2012 am No 13, 2013
s 13AB	ad No 7, 2012 am No 13, 2013
s 13A	ad No 152, 2004 am No 40, 2006; No 7, 2012; No 126, 2015; No 153, 2015

Endnote 4—Amendment history

Provision affected	How affected
Part III	
s 14	am No 40, 1996
s 15	am No 40, 1996; No 127, 2004; No 7, 2012; No 13, 2013
Part IIIA	
Part IIIA	ad No 120, 2012
s 15B	ad No 120, 2012
Part IIIBA	
Part IIIBA	ad No 7, 2012
s 15C	ad No 7, 2012
s 15CA	ad No 7, 2012 am No 7, 2012; No 153, 2015
Part IIIBB	
Part IIIBB	ad No 148, 2018
s 15CB	ad No 148, 2018
s 15CC	ad No 148, 2018
Part IIIB	
Part IIIB	ad No 120, 2012
s 15D	ad No 120, 2012
Part IV	
Division 1	
s 16	am No 40, 1996; No 7, 2012
s 19	am No 66, 1988; No 120, 1988; No 59, 2015 ed C38
s 20	am No 66, 1988
s 21	am No 40, 1996; No 59, 2015
s 24	rep No 40, 1996
s 25	am No 40, 1996; No 13, 2013
s 25A	ad No 40, 1996 rs No 3, 2011
Division 2	
s 26	am No 66, 1988

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 27	am No 66, 1988
Part IVA	
Part IVA	ad No 7, 2012
Division 1	
s 28A	ad No 7, 2012
Division 2	
s. 28B.....	ad. No. 7, 2012
s. 28C.....	ad. No. 7, 2012
Part V	
s. 29	am. No. 40, 1996
s. 30	rep. No. 40, 1996
s. 31	am. No. 40, 1996; No. 13, 2013
s. 31A	ad. No. 40, 1996 rs. No. 3, 2011
Part VI	
Division 1	
s. 32	am. No. 40, 1996; No. 86, 2002
s. 33	am. No. 40, 1996; No. 86, 2002
Division 2	
Division 2	rs No 86, 2002
Subdivision A	
s. 33A	ad. No. 83, 2011
s. 34	am. No. 120, 1988; No. 22, 2001 rs. No. 86, 2002 am. No. 174, 2011; No. 7, 2012
s. 34A	ad. No. 86, 2002 am. Nos. 83 and 174, 2011; No. 7, 2012
s. 34B.....	ad. No. 86, 2002 am. No. 174, 2011; No. 136, 2012
s. 34C.....	ad. No. 86, 2002 am. No. 174, 2011

Endnote 4—Amendment history

Provision affected	How affected
s. 34D	ad. No. 86, 2002
s. 34E.....	ad. No. 86, 2002
s. 34F	ad. No. 86, 2002 am. No. 7, 2012
s. 34G	ad. No. 86, 2002 am. No. 174, 2011
s. 34H	ad. No. 86, 2002
Subdivision B	
s. 34J.....	ad. No. 86, 2002 am. No. 174, 2011; No. 7, 2012
s. 34K	ad. No. 86, 2002 am. No. 174, 2011; No. 7, 2012
s. 34L.....	ad. No. 86, 2002
s. 34M.....	ad. No. 86, 2002 am. No. 174, 2011
Subdivision C	
s. 34N	ad. No. 86, 2002 rep. No. 7, 2012
s. 34P	ad. No. 86, 2002 am. No. 7, 2012; No 34, 2018
s. 34Q	ad. No. 86, 2002 am. No. 7, 2012
Subdivision D	
s. 34R.....	ad. No. 86, 2002 am. No. 7, 2012
s. 34S.....	ad. No. 86, 2002
s. 34T.....	ad. No. 86, 2002
s. 34U	ad. No. 86, 2002 am No 4, 2016; No 61, 2016
s. 34V	ad. No. 86, 2002 am No 4, 2016; No 61, 2016

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 34W.....	ad. No. 86, 2002 am No 4, 2016; No 61, 2016; No 34, 2018
Subdivision E	
s. 34X.....	ad. No. 86, 2002 rep. No. 7, 2012
s. 34Y.....	ad. No. 86, 2002 am. No. 7, 2012
s. 34Z.....	ad. No. 86, 2002
Subdivision F	
s. 34ZA.....	ad. No. 86, 2002 rep. No. 7, 2012
s. 34ZB.....	ad. No. 86, 2002 am. No. 7, 2012; No 34, 2018
s. 34ZC.....	ad. No. 86, 2002 rs No 34, 2018
s. 34ZCA.....	ad No 34, 2018
s. 34ZD.....	ad. No. 86, 2002 am No 34, 2018
s. 34ZE.....	ad. No. 86, 2002 am No 34, 2018
s. 34ZF.....	ad. No. 86, 2002 rs No 34, 2018
Subdivision G	
Subdivision G.....	ad. No. 7, 2012
s. 34ZG.....	ad. No. 7, 2012
Division 3	
Division 3.....	ad. No. 86, 2002
s. 35.....	am. No. 40, 1996 rs. No. 86, 2002 am. No. 174, 2011
s. 35A.....	ad. No. 86, 2002

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 174, 2011
s. 35B.....	ad. No. 86, 2002
	am. No. 7, 2012
s. 35C.....	ad. No. 86, 2002
s. 35D.....	ad. No. 86, 2002
s. 35E.....	ad. No. 86, 2002
	am. No. 174, 2011
s. 35F.....	ad. No. 86, 2002
s. 35G.....	ad. No. 86, 2002
s. 35H.....	ad. No. 86, 2002
s. 35J.....	ad. No. 86, 2002
	am. No. 96, 2010
s. 35K.....	ad. No. 86, 2002
s. 35L.....	ad. No. 86, 2002
	am. No. 96, 2010; No. 174, 2011
s. 35M.....	ad. No. 86, 2002
ss. 36, 37.....	am. No. 40, 1996
	rep. No. 86, 2002
Part VIA heading.....	am. No. 188, 1991
	rep. No. 66, 2002
Part VIA.....	ad. No. 123, 1991
	rep. No. 66, 2002
s. 37A.....	ad. No. 123, 1991
	am. No. 188, 1991; No. 40, 1996; No. 42, 2002
	rep. No. 66, 2002
Part VII.....	rep. No. 40, 1996
s. 38.....	rep. No. 40, 1996
Part VIIA	
Part VIIA.....	ad. No. 40, 1996
Division 1	
s. 38A.....	ad. No. 40, 1996

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s. 38B.....	ad. No. 40, 1996 am. No. 7, 2012
s. 38C.....	ad. No. 40, 1996 am. No. 7, 2012; No. 13, 2013
s. 38D.....	ad. No. 40, 1996 am. No. 13, 2013
s. 38E.....	ad. No. 40, 1996
s. 38F.....	ad. No. 40, 1996
s. 38G.....	ad. No. 40, 1996
s. 38H.....	ad. No. 40, 1996 am. No. 13, 2013
s. 38I.....	ad. No. 40, 1996 am. No. 13, 2013
Division 3	
s. 38J.....	ad. No. 40, 1996
s. 38K.....	ad. No. 40, 1996 am. No. 13, 2013
s. 38L.....	ad. No. 40, 1996
s. 38M.....	ad. No. 40, 1996
s. 38N.....	ad. No. 40, 1996 am. No. 13, 2013
s. 38O.....	ad. No. 40, 1996
s. 38P.....	ad. No. 40, 1996
s. 38Q.....	ad. No. 40, 1996
s. 38R.....	ad. No. 40, 1996
Division 4	
s. 38S.....	ad. No. 40, 1996
s. 38T.....	ad. No. 40, 1996
s. 38U.....	ad. No. 40, 1996
s. 38V.....	ad. No. 40, 1996

Endnote 4—Amendment history

Provision affected	How affected
Division 5	
s. 38W.....	ad. No. 40, 1996
s. 38X.....	ad. No. 40, 1996
s. 38Y.....	ad. No. 40, 1996
s. 38Z.....	ad. No. 40, 1996
	am. No. 13, 2013
s. 38ZA.....	ad. No. 40, 1996
	am. No. 127, 2004
s. 38ZB.....	ad. No. 40, 1996
	am. No. 13, 2013
Part VIII	
s. 38ZC.....	ad. No. 7, 2012
	am. No. 13, 2013
s. 38ZD.....	ad. No. 7, 2012
	am. No. 13, 2013
s. 39.....	am. No. 40, 1996; No 59, 2015
s. 39A.....	ad. No. 40, 1996
	am. No. 106, 2009; No. 7, 2012
s. 39B.....	ad. No. 40, 1996
s. 40.....	am. No. 40, 1996; No. 136, 2012
s. 42.....	ed C38
s. 43.....	am. No. 40, 1996; No. 7, 2012
s. 43A.....	ad. No. 164, 1992
	am. No. 40, 1996
s. 43B.....	ad. No. 40, 1996
	am No 4, 2016
s. 43C.....	ad. No. 40, 1996
s. 43D.....	ad. No. 7, 2012
	am No 197, 2012
s. 44.....	am. No. 7, 2012; No. 13, 2013

Endnotes

Endnote 5—Editorial changes

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Subsection 19(1A) and section 42

Kind of editorial change

Change to typeface

Details of editorial change

This compilation was editorially changed to update two occurrences of the italicised words *prima facie* to regular font.