

terrorist or subversive association, group or organization, whatever its structure or designation, even if its operations are not directed against Algeria. Penalties are also envisaged for any person involved in the manufacture, purchase, sale and importation of weapons and explosives intended for use in terrorist acts.

## II. AUSTRALIA<sup>2</sup>

### 1. CRIMES (INTERNATIONALLY PROTECTED PERSONS) ACT 1976<sup>3</sup>

An Act relating to the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

#### *Short title*

1. This Act may be cited as the Crimes (Internationally Protected Persons) Act 1976.

#### *Commencement*

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 11 shall come into operation on a date to be fixed by Proclamation, being a date not earlier than the date on which the Convention enters into force for Australia.

#### *Interpretation*

3. (1) In this Act, unless the contrary intention appears:

"Australia" includes:

- (a) all the Territories; and

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<sup>2</sup> Transmitted to the Secretariat by that Government on 1 September 1999. The following pieces of legislation have also been provided by the Government to the Secretariat and are available for consultation from the Codification Division, Office of Legal Affairs: the Crimes (Biological Weapons) Act 1976, the Chemical Weapons (Prohibition) Act 1994 and the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995.

<sup>3</sup> The Act has been amended by the Overseas Missions (Privileges and Immunities) (Consequential Amendments) Act 1995. The Schedule to the Act reproducing the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents has not been reproduced. The full text of the Act is available for consultation from the Codification Division, Office of Legal Affairs.

- (b) the Australian coastal sea;

"Australian aircraft" means:

- (a) an aircraft registered or required to be registered in accordance with the Civil Aviation Regulations as an Australian aircraft;
- (b) an aircraft that is owned by, or is in the possession or control of, the Commonwealth or an authority of the Commonwealth; or
- (c) an aircraft of any part of the Defence Force, including an aircraft that is being commanded or piloted by a member of that Force in the course of the member's duties as such a member;

"Australian coastal sea" means any sea or waters the sovereignty in respect of which is declared by the Seas and Submerged Lands Act 1973 to be vested in the Crown in right of the Commonwealth, and includes the airspace over, and the seabed and subsoil beneath, any such sea or waters;

"Australian ship" means:

- (a) a ship registered in Australia; or
- (b) a ship that belongs to an arm of the Defence Force;

"Convention" means the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, that was opened for signature at New York on 14 December 1973, a copy of the English text of which is set out in the Schedule.

(3) Except so far as the contrary intention appears, an expression that is used in this Act and in the Convention has, in this Act, the same meaning as in the Convention, whether or not a particular meaning is expressly assigned to it by the Convention and whether or not the Convention has entered into force in pursuance of paragraph 1 of article 17 of the Convention.

*Extended meaning of "internationally protected person"*

3A. (1) For the purposes of this Act, the definition of "internationally protected person" in paragraph 1 of article 1 of the Convention has effect as if the reference in that definition to a Head of State included, in relation to Australia, the Governor-General.

(2) For the purposes of this Act, the definition of "internationally protected person" in paragraph 1 of article 1 of the Convention has effect as if that definition included, in prescribed circumstances, the following persons:

- (a) a prescribed representative or official of Australia;
- (b) a prescribed representative or official of a prescribed state other than Australia;
- (c) a prescribed official or agent of a prescribed international organisation, where the organisation is of an intergovernmental character;
- (d) a prescribed official of a prescribed designated overseas mission;
- (e) a member of the family of a person covered by paragraph (a), (b), (c) or (d), where the family member is part of the person's household.

Note 1: A person may be prescribed by name, by reference to the holding of a specified office or position or by reference to membership of a specified class.

Note 2: A thing may be prescribed by name or by reference to membership of a specified class.

(3) The Governor-General may make regulations for the purposes of this section.

(4) In this section:

"designated overseas mission" has the same meaning as in the Overseas Missions (Privileges and Immunities) Act 1995;

"official", in relation to a designated overseas mission, means:

- (a) the head of the mission; or
- (b) a member of the staff of the mission.

*Extension of Act to Territories*

4. This Act extends to every Territory.

*Extraterritorial operation of Act*

5. This Act extends, except so far as the contrary intention appears:

- (a) to acts, matters and things outside Australia, whether or not in or over a foreign country; and
- (b) to all persons, irrespective of their nationality or citizenship.

*Effect of this Act on other laws*

6. (1) Except as provided by this section, this Act is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

(2) Where any conduct by a person is both an offence against this Act and an offence against any other law referred to in subsection (1) and that person is convicted of either of those offences, that person is not liable to be convicted of the other of those offences.

(3) Where a person has been convicted of an offence under the law of a country outside Australia in respect of any conduct, that person is not liable to be convicted of an offence against this Act in respect of that conduct.

*Ratification of Convention*

7. Approval is given to the ratification by Australia of the Convention.

*Offences*

8. (1) A person who murders or kidnaps an internationally protected person is guilty of an offence against this Act and is punishable on conviction by imprisonment for life.

(2) A person who commits any other attack upon the person or liberty of an internationally protected person is guilty of an offence against this Act and is punishable on conviction:

- (a) where the attack causes death - by imprisonment for life;
- (b) where the attack causes grievous bodily harm - by imprisonment for a period not exceeding 20 years; or
- (c) in any other case - by imprisonment for a period not exceeding 10 years.

(3) A person who intentionally destroys or damages (otherwise than by means of fire or explosive):

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 10 years.

(3A) A person who intentionally destroys or damages (otherwise than by means of fire or explosive):

(a) any official premises, private accommodation or means of transport, of an internationally protected person; or

(b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 20 years.

(3B) A person who intentionally destroys or damages by means of fire or explosive:

(a) any official premises, private accommodation or means of transport, of an internationally protected person; or

(b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 15 years.

(3C) A person who intentionally destroys or damages by means of fire or explosive:

(a) any official premises, private accommodation or means of transport, of an internationally protected person; or

(b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present;

with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence against this Act and is punishable upon conviction by imprisonment for a period not exceeding 25 years.

(4) A person who threatens to do anything that would constitute an offence against subsection (1), (2), (3), (3A), (3B) or (3C) is guilty of an offence against this Act and is punishable on conviction by imprisonment for a period not exceeding 7 years.

(5) For the purposes of this Act, an offence created by section 5 or 7 of the Crimes Act 1914-1975 shall, to the extent that it relates to an offence against subsection (1), (2), (3), (3A), (3B), (3C) or (4), be deemed to be an offence against this Act.

(6) Where, on the trial of a person for an offence against subsection (1), or for an offence against section 7 of the Crimes Act 1914 that is related to such an offence, the evidence does not establish the commission by the person of such an offence but establishes the commission by the person of an offence against subsection (2), the person may be found guilty of the last-mentioned offence.

(7) For the purposes of this section:

(a) kidnapping a person consists of leading, taking or enticing the person away, or detaining the person, with intent to hold the person for ransom or as a hostage or otherwise for the purpose of inducing compliance with any demand or obtaining any advantage;

(b) murdering a person consists of causing the death of that person in circumstances in which the person causing the death would be guilty of murder according to the law in force in the Australian Capital Territory at the time of the conduct causing the death, whether or not the conduct took place in that Territory;

(c) a reference to an attack upon the person of an internationally protected person shall be read as including a reference to assaulting an internationally protected person or to administering or applying to an internationally protected person, or causing an internationally protected person to take, a poison, drug or other destructive or noxious substance or thing;

(d) a person who destroys or damages any official premises, private accommodation or means of transport or any other premises or property shall be taken to have done so intentionally if the person acted:

(i) with intent to destroy or damage those premises or that property; or

(ii) in the knowledge or belief that the actions were likely to result in the destruction of, or damage to, those premises or that property; and

(e) a person who destroys or damages any official premises, private accommodation or means of transport or any other premises or property shall be taken to have intended to endanger the life of another person by that destruction or damage if the first-mentioned person acted:

(i) with intent to endanger the life of that other person; or

(ii) in the knowledge or belief that the actions were likely to endanger the life of that other person.

*Liability to prosecution*

10. A person is not liable to be charged for an offence against this Act unless:

- (a) the offence is committed in Australia or on an Australian ship or Australian aircraft; or
- (b) the offence is committed after the Convention enters into force for Australia and the person is found in Australia or Australia is required by article 3 of the Convention to establish its jurisdiction over the offence.

*Taking offenders into custody*

11. (1) In this section, "constable" means a member or special member of the Australian Federal Police or a member of a police force of a State or Territory.

(2) Where a constable has reasonable grounds to suspect that a person who is in Australia has committed, outside Australia, an offence against this Act, the constable:

- (a) may take the person into custody for the purpose of being dealt with in accordance with this section; and
- (b) shall cause the person so taken into custody:
  - (i) to be brought before a Magistrate as soon as practicable to be dealt with in accordance with this section; and
  - (ii) to be held in custody until the person can be so brought before a Magistrate.

(3) Where:

- (a) a person is brought or appears before a Magistrate in accordance with subsection (2) or on the expiration of a period of remand fixed under subsection (4) or in pursuance of a warrant issued under subsection (6); and
- (b) there is produced to the Magistrate a warrant for the apprehension of the person for the purposes of criminal or extradition proceedings in connexion with an offence against this Act or any other offence;

the Magistrate shall make such order as is appropriate to facilitate the execution of the warrant.

(4) Where, in the circumstances referred to in paragraph (3) (a), a warrant referred to in paragraph (3) (b) is not produced to the Magistrate, the Magistrate shall:

(a) if the Magistrate is satisfied that further time is reasonably required for determining whether criminal or extradition proceedings should be instituted against the person - remand, or further remand, the person, either in custody or on bail, for a period not exceeding 7 days; or

(b) if the Magistrate is not so satisfied - order that the person be released from custody.

(5) Where a Magistrate remands, or further remands, a person in custody under subsection (4), the person shall, at the expiration of the period of remand or further remand, be brought before that Magistrate or another Magistrate.

(6) If a person who has been remanded on bail under subsection (4) does not appear before a Magistrate at the time and place mentioned in the recognizance entered into by the person on being granted bail, a Magistrate may issue a warrant for the apprehension of the person and for bringing the person before a Magistrate.

(7) A person, other than an Australian citizen, who is taken into custody under subsection (2) is entitled to the rights conferred by paragraph 2 of article 6 of the Convention.

(8) The laws in force in a State or Territory with respect to:

(a) the conditions under which persons charged with offences against the law of that State or Territory are held in custody on remand;

(b) the treatment of such persons while so held in custody; and

(c) the transfer of such persons from one prison or other place of confinement to another;

apply, so far as they are capable of application, in relation to persons who are held in custody on remand, in accordance with an order under this section, in the prisons or other places of confinement of the State or Territory.

(9) Nothing in this section prevents the arrest of a person for an offence against this Act in accordance with any other law.

#### *Prosecutions*

12. (1) Subject to subsection (2), a prosecution for an offence against this Act shall be on indictment.

(2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for the person's commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on



indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.

(3) Proceedings for the commitment of a person for trial on indictment for an offence against this Act shall not be instituted except with the consent in writing of the Attorney-General or a person authorized by the Attorney-General, by instrument in writing, to give such consents.

(4) Notwithstanding that a consent has not been given in relation to the offence in accordance with subsection (3):

(a) a person may be charged with an offence against this Act;

(b) a person may be arrested for an offence against this Act, and a warrant for such an arrest may be issued and executed; and

(c) a person so charged may be remanded in custody or on bail;

but no further step in proceedings referred to in subsection (3) shall be taken in relation to the offence until such a consent has been given.

(5) Nothing in subsection (4) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

#### *Evidence of matters relating to Convention*

13. (1) The Minister for Foreign Affairs may give a written certificate stating:

(a) that the Convention entered into force for a particular country on a particular day; or

(b) that a particular country has not denounced the Convention; or

(c) that a particular country has denounced the Convention and the denunciation took effect on a particular day.

(2) Australia may be named in a certificate under subsection (1).

(3) A certificate given under subsection (1) is admissible in any proceedings as prima facie evidence of the matters stated in the certificate.

#### *Certificates by Minister for Foreign Affairs*

14. (1) The Minister for Foreign Affairs may give a written certificate stating any matter relevant to the question whether a person is, or was at any time or in respect of any period, an internationally protected person.

(2) A certificate given under subsection (1) is admissible in any proceedings as prima facie evidence of the matters stated in the certificate.

*Jurisdiction of courts*

15. (1) A provision of the Judiciary Act 1903-1973 by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

(2) Subject to section 80 of the Constitution, where a person has committed an offence against this Act outside a Territory and is found in, or brought into, the Territory, a court of the Territory has the same jurisdiction in respect of the offence as it would have if the offence had been committed in the Territory.

(3) The trial of an offence against this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

*Section 38 of Judiciary Act*

16. A matter arising under this Act, including a question of interpretation of the Convention for the purposes of this Act, shall, for the purposes of section 38 of the *Judiciary Act 1903-1973*, be deemed not to be a matter arising directly under a treaty.

2. CRIMES (FOREIGN INCURSIONS AND RECRUITMENT) ACT  
1978<sup>4</sup>

An Act relating to Incursions into Foreign States and Recruitment for Service in Armed Forces in Foreign States

*Short title*

1. This Act may be cited as the Crimes (Foreign Incursions and Recruitment) Act 1978.

*Commencement*

2. This Act shall come into operation on the day on which it receives the Royal Assent.

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<sup>4</sup> As amended.

### *Interpretation*

3.(1) In this Act, unless the contrary intention appears: 'armed force' does not include an armed force forming part of the Defence Force of Australia;

'Australia' includes the external Territories;

'foreign State' means a place outside Australia that is:

- (a) an independent sovereign state; or
- (b) an area of land (whether or not it is self-governing) that is not part of an independent sovereign state;

'government', in relation to a foreign State or a part of a foreign State, means the authority exercising effective governmental control in that foreign State or that part of that foreign State;

'incite' includes urge, aid and encourage and also includes print or publish any writing that incites, urges, aids or encourages;

'recruit' includes procure, induce and incite.

(2) A reference in this Act to a part of a foreign State shall be read as a reference to a political subdivision of a foreign State.

### *Extension of Act to Territories*

4. This Act extends to every Territory.

### *Act not to apply to acts done for defence of Australia*

5. Nothing in this Act applies to any act done by a person acting in the course of the person's duty to the Commonwealth in relation to the defence of Australia.

### *Incursions into foreign States for purpose of engaging in hostile activities*

6.(1) A person shall not:

- (a) enter a foreign State with intent to engage in a hostile activity in that foreign State; or
- (b) engage in a hostile activity in a foreign State.

Penalty: Imprisonment for 14 years

(2) A person shall not be taken to have committed an offence against this section unless:

(a) at the time of the doing of the act that is alleged to constitute the offence, the person:

(i) was an Australian citizen; or

(ii) not being an Australian citizen, was ordinarily resident in Australia; or

(b) the person was present in Australia at any time during the period of one year immediately preceding the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.

(3) For the purposes of subsection (1), engaging in a hostile activity in a foreign State consists of doing an act for the purpose of achieving any one or more of the following objectives (whether or not such an objective is achieved):

(a) the overthrow by force or violence of the government of the foreign State or of a part of the foreign State;

(aa) engaging in armed hostilities in the foreign State;

(b) causing by force or violence the public in the foreign State to be in fear of suffering death or personal injury;

(c) causing the death of, or bodily injury to, a person who:

(i) is the head of state of the foreign State; or

(ii) holds, or performs any of the duties of, a public office of the foreign State or of a part of the foreign State; or

(d) unlawfully destroying or damaging any real or personal property belonging to the government of the foreign State or of a part of the foreign State.

(4) Nothing in this section applies to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:

(a) the armed forces of the government of a foreign State; or

(b) any other armed force in respect of which a declaration by the Minister under subsection 9 (2) is in force.

*Preparations for incursions into foreign States for purpose of engaging in hostile activities*

7. (1) A person shall not, whether within or outside Australia:

(a) do any act preparatory to the commission of an offence against section 6, whether by that person or by another person;

(b) accumulate, stockpile or otherwise keep arms, explosives, munitions, poisons or weapons for the purpose of the commission of an offence against section 6, whether by that person or by another person;

(c) train or drill or participate in training or drilling, or be present at a meeting or assembly of persons with intent to train or drill or to participate in training or drilling, any other person in the use of arms or explosives, or the practice of military exercises, movements or evolutions, for the purpose of preparing that other person to commit an offence against section 6;

(d) allow himself or herself to be trained or drilled, or be present at a meeting or assembly of persons with intent to allow himself or herself to be trained or drilled, in the use of arms or explosives, or the practice of military exercises, movements or evolutions, for the purpose of the commission of an offence against section 6;

(e) give money or goods to, or perform services for, any other person or any body or association of persons for the purpose of supporting or promoting the commission of an offence against section 6;

(f) receive or solicit money or goods, or the performance of services, for the purpose of supporting or promoting the commission of an offence against section 6;

(g) being the owner, lessee, occupier, agent or superintendent of any building, room, premises or place, knowingly permit a meeting or assembly of persons to be held in the building, room, premises or place for the purpose of committing, or supporting or promoting the commission of, an offence against paragraph (a), (b), (c), (d), (e) or (f); or

(h) being the owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator or pilot in charge of an aircraft, knowingly permit the vessel or aircraft to be used for the purpose of committing, or supporting or promoting the commission of, an offence against paragraph (a), (b), (c), (d), (e) or (f).

(1A) A reference in subsection (1) to the commission of an offence against section 6 is a reference to the doing of an act that would constitute, or would but for subsection 6 (2) constitute, an offence against section 6.

(1B) A person shall not be taken to have committed an offence against this section merely because of doing an act by way of, or for the purposes of, the provision of aid of a humanitarian nature.

(2) A person shall not be taken to have committed an offence against this section in respect of the doing of an act outside Australia unless:

(a) at the time of the doing of that act, the person:

(i) was an Australian citizen; or

(ii) not being an Australian citizen, was ordinarily resident in Australia; or

(b) the person was present in Australia at any time during the period of one year immediately preceding the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.

Penalty: Imprisonment for 10 years

*Recruiting persons to join organizations engaged in hostile activities against foreign governments*

8. A person shall not, in Australia, recruit another person to become a member of, or to serve in any capacity with, a body or association of persons the objectives of which are or include any of the objectives referred to in subsection 6 (3).

Penalty: Imprisonment for 7 years

*Recruiting persons to serve in or with an armed force in a foreign State*

9.(1) A person shall not, in Australia:

(a) recruit another person to serve in any capacity in or with an armed force in a foreign State, whether the armed force forms part of the armed forces of the government of that foreign State or otherwise;

(b) publish an advertisement for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c) publish an advertisement containing any information:

- (i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with such an armed force; or
  - (ii) relating to the manner in which persons may travel to a foreign State for the purpose of serving in any capacity in or with such an armed force; or
- (d) do any other act or thing for the purpose of facilitating or promoting the recruitment of persons to serve in any capacity in or with such an armed force.

**Penalty:**

- (a) if the person is a natural person-\$20,000 or imprisonment for 7 years, or both; or
  - (b) if the person is a body corporate-\$100,000.
- (2) If the Minister has, by instrument signed by the Minister and published in the Gazette, declared that it is in the interests of the defence or international relations of Australia to permit the recruitment in Australia, either generally or in particular circumstances or subject to specified conditions, of persons to serve in or with a specified armed force, or to serve in or with a specified armed force in a particular capacity, subsection (1) does not apply, or does not apply in those circumstances or where those conditions are complied with, as the case may be, to or in relation to recruitment to serve, or the publication of an advertisement containing information with respect to service, in or with that armed force, or in or with that armed force in that capacity, as the case may be.
- (3) If a person recruits another person to enter into a commitment or engagement to serve in any capacity in or with an armed force, the first-mentioned person shall be taken, for the purposes of this section, to recruit that other person to serve in or with that armed force whether or not the commitment or engagement is legally enforceable and whether or not it constitutes a legal or formal enlistment in that force.
- (4) The provisions of section 48 (except paragraphs (1) (a) and (b) and subsection (2)) and of sections 48A, 48B and 49 of the Acts Interpretation Act 1901 apply, by force of this section, to a declaration made under subsection (2) of this section in like manner as those provisions apply to regulations.
- (5) For the purposes of this section, the publication of an item of news shall be deemed to constitute the publication of an advertisement if the publication was procured by the payment of, or by a promise to pay, money or by the provision of, or by a promise to provide, any other consideration.

*Mode of trial*

9A.(1) Subject to subsection (2), a prosecution for an offence against this Act shall be on indictment.

(2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for the person's commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.

(3) A reference in this section to an offence against this Act includes a reference to an offence against:

- (a) section 6 or 7 of the *Crimes Act 1914*; or
- (b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

that relates to an offence against this Act.

*Consent of Attorney-General required for prosecutions*

10. (1) Proceedings for the commitment of a person for trial on indictment for an offence against this Act, or for the summary trial of a person for an offence against this Act, shall not be instituted except with the consent in writing of the Attorney-General.

(2) Notwithstanding that a consent has not been given in relation to the offence in accordance with subsection (1):

- (a) a person may be charged with an offence against this Act;
- (b) a person may be arrested for an offence against this Act, and a warrant for such an arrest may be issued and executed; and
- (c) a person so charged may be remanded in custody or on bail;

but no further step in proceedings referred to in subsection (1) shall be taken in relation to the offence until such a consent has been given.

(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

(4) A reference in this section to an offence against this Act includes a reference to an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or



(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

that relates to an offence against this Act.

### *Certificates of Ministers*

11. (1) In a proceeding against a person for an offence against this Act in relation to a foreign State, a certificate by a Minister, stating that a place or an area specified in the certificate is or is in, or on a specified day or during a specified period was or was in, an independent sovereign state is conclusive evidence of the matters stated in the certificate.

(2) In a proceeding against a person for an offence against this Act, a certificate by a Minister stating that, if the person had done an act specified in the certificate, being an act alleged to constitute the offence, the person would not have been acting in the course of the person's duty to the Commonwealth in relation to the defence of Australia is *prima facie* evidence of the matters stated in the certificate.

(3) In a proceeding against a person for an offence against this Act in relation to the government of a foreign State or a part of a foreign State, a certificate by a Minister stating that an authority described in the certificate is, or on a specified day or during a specified period was, in effective governmental control in a specified foreign State, or in a specified part of a foreign State, is *prima facie* evidence of the matters stated in the certificate.

(4) A reference in this section to an offence against this Act includes a reference to an offence against:

(a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection; that relates to an offence against this Act.

## 3. NUCLEAR NON-PROLIFERATION (SAFEGUARDS) ACT 1987<sup>5</sup>

### DIVISION 2—OFFENCES RELATING TO THE PHYSICAL PROTECTION CONVENTION

#### *Interpretation*

32. In this Division, “*nuclear material*” has the same meaning as in the Physical Protection Convention.

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<sup>5</sup>Act No. 8 of 1987 as amended. The full text of the Act is available for consultation from the Codification Division, Office of Legal Affairs.

*Stealing nuclear material*

33. A person shall not:

- (a) steal;
- (b) fraudulently misappropriate;
- (c) fraudulently convert to that person's own use; or
- (d) obtain by false pretences;

any nuclear material.

Penalty: \$20,000 or imprisonment for 10 years, or both.

*Demanding nuclear material by threats*

34. A person shall not demand that another person give nuclear material to the first-mentioned person or some other person by force or threat of force or by any form of intimidation.

Penalty: \$20,000 or imprisonment for 10 years, or both.

*Use of nuclear material causing injury to persons or damage to property*

35. A person shall not use nuclear material to cause:

- (a) serious injury to any person; or
- (b) substantial damage to property.

Penalty: \$20,000 or imprisonment for 10 years, or both.

*Threat to use nuclear material*

36. A person shall not:

- (a) threaten;
- (b) state that it is his or her intention; or
- (c) make a statement from which it could reasonably be inferred that it is his or her intention;

to use nuclear material to cause:

- (d) the death of, or injury to, any person; or
- (e) damage to property.

Penalty: \$20,000 or imprisonment for 10 years, or both.

*Threat to commit offence*

37. A person shall not:

- (a) threaten;
- (b) state that it is his or her intention; or
- (c) make a statement from which it could reasonably be inferred that it is his or her intention;

to do any act that would be a contravention of section 33 in order to compel a person (including an international organisation or the Government of Australia or of a foreign country) to do or refrain from doing any act or thing.

Penalty: \$20,000 or imprisonment for 10 years, or both.

*Extension of application of offence provisions*

38. (1) Subject to subsection (2), this Division extends to an act or thing done outside Australia.

(2) Proceedings against a person for an offence against a provision of this Division in respect of an act or thing done outside Australia (other than an act or thing to which subsection (3) applies) shall not be commenced unless:

- (a) the person is present in Australia;
- (b) the act or thing was done in the territory of a foreign country that was, at the time when the act or thing was done, a State Party to the Physical Protection Convention;
- (c) Australia was, at the time when the act or thing was done, a State Party to the Physical Protection Convention;
- (d) the person has not been prosecuted (whether in Australia or in a foreign country) in respect of the doing of the act or thing; and
- (e) Australia has not extradited the person to a foreign country in respect of the doing of the act or thing.

(3) This subsection applies to an act or thing done outside Australia if the act or thing is done:

- (a) on an Australian ship or Australian aircraft;
- (b) in the course of international nuclear transport of nuclear material in a case where Australia is the State where the shipment originates or the State of ultimate destination; or
- (c) by an Australian citizen.

(4) Subsection (1) shall not be read as derogating from the effect of the *Crimes at Sea Act 1979*.

(5) In subsection (3), *international nuclear transport*, *State where the shipment originates* and *State of ultimate destination* have the same respective meanings as they have in the Physical Protection Convention.

#### 4. CRIMES (HOSTAGES) ACT 1989<sup>6</sup>

An Act to give effect to the International Convention Against the Taking of Hostages, and for related purposes

##### *Short title*

1. This Act may be cited as the *Crimes (Hostages) Act 1989*.

##### *Commencement*

2. This Act commences on a day to be fixed by Proclamation.

##### *Interpretation*

3. (1) In this Act, unless the contrary intention appears:

"Australia" includes:

- (a) the external Territories; and
- (b) the Australian coastal sea;

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<sup>6</sup> As amended. The Schedule to the Act reproducing the International Convention Against the Taking of Hostages has not been reproduced here. The full text of the Act is available for consultation from the Codification Division, Office of Legal Affairs.

"Australian aircraft" means:

- (a) an aircraft registered in accordance with the Civil Aviation Regulations as an Australian aircraft;
- (b) an aircraft that is owned by, or is in the possession or control of, the Commonwealth or an authority of the Commonwealth; or
- (c) an aircraft of any part of the Defence Force (including an aircraft that is being commanded or piloted by a member of that Force in the course of the member's duties as such a member);

"Australian coastal sea" means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia;

"Australian ship" means:

- (a) a ship registered in Australia;
- (b) an unregistered ship that has Australian nationality; or
- (c) a ship that belongs to an arm of the Defence Force;

"Convention" means the International Convention Against the Taking of Hostages that was opened for signature at New York on 18 December 1979, a copy of the English text of which is set out in the Schedule;

"offence against this Act" means:

- (a) an offence against subsection 8 (1); or
- (b) an offence against:
  - (i) section 7 of the *Crimes Act 1914*; or
  - (ii) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

being an offence that relates to an offence referred to in paragraph (a) of this definition;

"part of Australia" means a State or Territory.

(2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Convention (whether or not a particular meaning is given to

it by the Convention) has, in this Act, the same meaning as it has in the Convention.

(3) For the purposes of sections 6 and 7A of the *Crimes Act 1914*, an offence against subsection 8 (1) of this Act shall be taken not to be an offence against a law of the Commonwealth.

*Act extends to external Territories*

4. This Act extends to all external Territories.

*Application*

5. This Act extends, except so far as the contrary intention appears:

- (a) to acts, matters and things outside Australia, whether or not in or over a foreign country; and
- (b) to all persons, irrespective of their nationality or citizenship.

*Effect of this Act on other laws*

6. (1) This Act is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

(2) Where a person has been convicted in a country outside Australia of an offence against the law of that country in respect of any conduct, that person is not liable to be convicted of an offence against this Act in respect of that conduct.

*Meaning of hostage-taking*

7. For the purposes of this Act, a person commits an act of hostage-taking if the person:

- (a) seizes or detains another person (in this section called "the hostage"); and
- (b) threatens to kill, to injure, or to continue to detain, the hostage; in order to compel:
- (c) a legislative, executive or judicial institution in Australia or in a foreign country;
- (d) an international intergovernmental organisation; or
- (e) any other person (whether an individual or a body corporate) or group of persons;

to do, or abstain from doing, any act as an explicit or implicit condition for the release of the hostage.

*When hostage-taking an offence*

8. (1) A person who, at any time after the Convention enters into force for Australia, commits an act of hostage-taking is guilty of an offence against this subsection.

(2) The punishment for an offence against subsection (1) is imprisonment for life or for any lesser term.

(3) Subject to section 9, a person shall not be charged with an offence against this Act unless:

(a) the act alleged to constitute the offence was committed:

(i) in Australia; or

(ii) on an Australian ship or an Australian aircraft, whether in or outside Australia; or

(b) where the act alleged to constitute the offence was committed outside Australia (otherwise than on an Australian ship or an Australian aircraft):

(i) the person was, at the time the act was committed, an Australian citizen;

(ii) the person is present in Australia; or

(iii) the act was committed in order to compel a legislative, executive or judicial institution in Australia to do, or abstain from doing, any act.

*Person not to be charged in certain circumstances*

9. (1) A person shall not be charged in relation to an act alleged to constitute an offence against this Act if, under article 12 of the Convention, the Convention would not apply in relation to that act.

(2) Subject to subsection (3), a person shall not be charged with an offence against this Act if:

(a) the act alleged to constitute the offence was committed in a particular State;

(b) the person was, at the time the act was committed, a citizen of that State;

(c) the person is in that State; and

(d) the person seized or detained as a hostage was, at the time of that seizure or detention, a citizen of that State.

(3) Subsection (2) does not apply where the person referred to in paragraph (2) (c) is in the State where the act alleged to constitute the offence was committed by reason of being extradited to that State in relation to that act.

(4) In this section, "State" means:

(a) Australia; or

(b) a foreign country.

#### *Prosecutions*

10. (1) Proceedings for the commitment of a person for trial on indictment for an offence against this Act shall not be instituted except with the consent in writing of the Attorney-General.

(2) Notwithstanding that a consent in accordance with subsection (1) has not been given in relation to an offence against this Act:

(a) a person may be charged with an offence against this Act;

(b) a person may be arrested for such an offence, and a warrant for such an arrest may be issued and executed; and

(c) a person so charged may be remanded in custody or on bail;

but no further step in proceedings referred to in subsection (1) shall be taken until such a consent has been given.

(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

#### *Venue where offence committed on aircraft*

11. Where, in the trial on indictment in a court of a State or Territory of an offence against this Act committed on an aircraft in flight, an act constituting in whole or in part the offence charged is proved, it shall be presumed, unless the evidence shows the contrary, that that act did not take place in another part of Australia, being a State.



*Change of venue*

12. (1) Where, at any time after the presentation in a court of a State or Territory of an indictment for an offence against this Act committed on an aircraft in flight and before the jury has returned its verdict:

(a) the defendant objects to the trial on the ground that the offence, if committed, was committed in another part of Australia, being a State; and

(b) the court is satisfied that the offence, if committed, was committed in that other part of Australia;

the court shall forthwith order that the proceedings on the indictment be discontinued and, if the jury has been empanelled, that the jury be discharged, and that the defendant appear before that court or another court of the first-mentioned State or Territory at a specified time, not later than 28 days after the day on which the order is made, to be dealt with in accordance with this section.

(2) Where a court makes an order under subsection (1), the court may also:

(a) order that the defendant be kept in such custody as is specified in the order; or

(b) admit the defendant to bail, on such recognizances as the court thinks fit.

(3) If, before the time at which the defendant is to appear before a court pursuant to an order under subsection (1), the Attorney-General or the Director of Public Prosecutions notifies that court that he or she does not intend to file an indictment against the defendant in a court of another part of Australia, the first-mentioned court shall, as soon as practicable after being so notified, make an order:

(a) discharging the defendant from the obligation to appear before that court at that time; and

(b) directing:

(i) if the defendant is held in custody - that he or she be released; or

(ii) if he or she has been admitted to bail - that the recognizances upon which he or she was admitted to bail be discharged.

(4) If, at or before the time at which the defendant is to appear before a court pursuant to an order under subsection (1), the Attorney-General or the Director of Public Prosecutions notifies that court that he or she has filed an indictment against

the defendant in a court of another part of Australia, the first-mentioned court shall:

- (a) if the defendant is in custody - forthwith; or
- (b) in any other case - as soon as practicable after the time at which the defendant is to appear before that court;

make an order directing that the defendant be taken, as soon as practicable, in the custody of such person as it directs, to the part of Australia in which the indictment was filed and there be delivered to the custody of a person having authority to arrest the defendant, and may make such further orders as it thinks necessary for facilitating the carrying into effect of the first-mentioned order.

(5) If:

- (a) at the time at which the defendant is to appear before a court pursuant to an order under subsection (1), neither the Attorney-General nor the Director of Public Prosecutions has notified that court that he or she does not intend to file an indictment against the defendant in a court in another part of Australia;
- (b) neither the Attorney-General nor the Director of Public Prosecutions notifies the first-mentioned court before or at that time that he or she has filed such an indictment; and
- (c) the defendant is in custody;

the first-mentioned court shall, at that time, make an order directing that the defendant be released.

(6) Where an order has been made under subsection (1) in relation to an indictment, the proceedings on that indictment do not, and that order does not, prevent or prejudice any other indictment, or any information, against the defendant, whether on the same charge or on any other charge.

(7) The jurisdiction of a court under subsection (3), (4) or (5) may be exercised by the court constituted by a single judge or Magistrate.

#### *Evidence of certain matters*

13. (1) The Minister for Foreign Affairs may give a written certificate stating that:

- (a) the Convention entered into force for Australia on a particular day; and

(b) as at the date of the certificate, the Convention remains in force for Australia.

(2) A certificate given under subsection (1) is admissible in any proceedings as prima facie evidence of the matters stated in the certificate.

*Section 38 of Judiciary Act*

14. A matter arising under this Act, including a question of interpretation of the Convention for the purposes of this Act, shall, for the purposes of section 38 of the Judiciary Act 1903, be deemed not to be a matter arising directly under a treaty.

*Assistance under article 6 of Convention*

15. A person, other than an Australian citizen, who is in custody in respect of an offence that is alleged to have been committed against this Act is entitled to the assistance referred to in paragraph 3 of article 6 of the Convention.

## 5. CRIMES (AVIATION) ACT 1991<sup>7</sup>

An Act relating to crimes and certain other acts committed on or in respect of certain aircraft, aerodromes, airports and air navigation facilities, and for related purposes

### PART 1—INTRODUCTORY

#### Division 1—Short title and commencement

*Short title*

1. This Act may be cited as the *Crimes (Aviation) Act 1991*.

*Commencement*

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

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<sup>7</sup> Act No. 139 of 1991 as amended. Schedule 1 reproducing the Convention on the Suppression of Unlawful Seizure of Aircraft; Schedule 2 reproducing the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; Schedule 3 reproducing the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; Schedule 4 reproducing the Convention on Offences and Certain Acts Committed on Board Aircraft; and Schedule 5 containing consequential amendments of other acts have not been reproduced. The full text of the Act is available for consultation from the Codification Division, Office of Legal Affairs.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

## Division 2—Definitions and interpretation

### *Definitions*

3. (1) In this Act, unless the contrary intention appears:

“Australia” includes the external Territories.

“Australian aircraft” means:

- (a) an aircraft registered, or required to be registered, under the Civil Aviation Regulations as an Australian aircraft; or
- (b) a Commonwealth aircraft; or
- (c) a defence aircraft.

“authorised person” means:

- (a) in sections 30 and 33—any of the following persons:
  - (i) a protective service officer within the meaning of the *Australian Protective Service Act 1987*;
  - (ii) a member of the Australian Federal Police or an officer of the police force (however described) of a State or Territory;
  - (iii) the manager of any Commonwealth aerodrome or prescribed airport;
  - (iv) a person who is an authorised officer for the purposes of section 89 of the *Migration Act 1958*; or
- (b) in section 32—a member of the Australian Federal Police, or an officer of the police force (however described) of a State or Territory, being a member or officer of or above the rank of sergeant; or

(c) in section 37—an SES employee or acting SES employee in the Attorney-General’s Department who is appointed in writing by the Minister to be an authorised person for the purposes of that section; or

(d) in section 49—a person engaged under the *Public Service Act 1999* who is appointed in writing by the Minister administering the *Air Navigation Act 1920* to be an authorised person for the purposes of that section;

and includes, in relation to any of those provisions, a person who is, under section 54, taken to be an authorised person for the purposes of that provision.

“Civil Aviation Regulations” means regulations made under the *Civil Aviation Act 1988*, and includes any of those regulations as in force under the law of a State.

“commencing day” means the day on which this Act commences.

“Commonwealth aerodrome” means:

(a) an area of land or water in Australia that is owned by the Commonwealth and used, or intended for use, either wholly or partly, for, or in connection with, the arrival, departure or other movement of aircraft; or

(b) a Federal airport;

and includes any building, structure, installation or equipment in that area, or on the land that forms the Federal airport, that is provided for use in connection with the operation of that area or land as an aerodrome or Federal airport, as the case may be.

“Commonwealth aircraft” means an aircraft, other than a defence aircraft, that is owned by, or in the possession or control of, the Commonwealth or a Commonwealth authority.

“Commonwealth air navigation facilities” means buildings, structures, installations or equipment, anywhere in Australia, that are provided by the Commonwealth, or a Commonwealth authority, for use in connection with aircraft navigation, but does not include any building, structure, installation or equipment forming part of a Commonwealth aerodrome.

“Convention offence” means an offence against a provision of Division 1 or 4 of Part 2.

“dangerous goods” means:

(a) firearms, ammunition, weapons and explosive substances; or

(b) any substance or thing that, because of its nature or condition, may endanger the safety of an aircraft or of people on board an aircraft.

“defence aircraft” means an aircraft of any part of the Defence Force, and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member.

“Division 2 aircraft” means:

- (a) an aircraft (including a foreign aircraft) that is:
  - (i) engaged in a prescribed flight; or
  - (ii) outside Australia while engaged in a flight that started in Australia; or
  - (iii) engaged in a flight between a part of Australia and a place outside Australia; or
- (b) an Australian aircraft (other than a Commonwealth aircraft or a defence aircraft) that is engaged in a flight wholly outside Australia; or
- (c) a Commonwealth aircraft or a defence aircraft that is engaged in any flight, including a flight wholly outside Australia.

“Division 3 aircraft” means:

- (a) an Australian aircraft (other than a Commonwealth aircraft or a defence aircraft) that is mainly used for the purpose of any of the following flights, or is engaged, or is intended or likely to be engaged, in such a flight:
  - (i) a prescribed flight;
  - (ii) a flight between a part of Australia and a place outside Australia;
  - (iii) a flight wholly outside Australia; or
- (b) a Commonwealth aircraft; or
- (c) a defence aircraft; or

(d) a foreign aircraft that is in Australia; or

(e) a foreign aircraft that is outside Australia while engaged in a flight that started in Australia or that was, when the flight started, intended to end in Australia.

“Federal airport” has the same meaning as in the *Federal Airports Corporation Act 1986*.

“foreign aircraft” means an aircraft other than an Australian aircraft, including such an aircraft owned or operated by the government of a foreign country.

“Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft, ratified by Australia on 9 September 1972, and whose English text is set out in Schedule 1.

“hijacking” has the meaning given in section 9.

“in flight”, in relation to an aircraft, has, for the purposes of section 10 and Division 4 of Part 2, the same meaning as in the Montreal Convention.

(Note: see Article 2 of the Montreal Convention)

“in service”, in relation to an aircraft, has, for the purposes of section 10 and Division 4 of Part 2, the same meaning as in the Montreal Convention.

(Note: see Article 2 of the Montreal Convention)

“landing” includes alighting on water.

“magistrate” means:

(a) a magistrate of a Territory other than the Australian Capital Territory, the Northern Territory or Norfolk Island; or

(b) a magistrate of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island to whom an arrangement in force under section 51 applies.

“member of the crew”, in relation to an aircraft, means a person having duties or functions on board the aircraft.

“Montreal Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ratified by Australia on 12 July 1973, and whose English text is set out in Schedule 2.

“part of Australia” means a State or Territory.

“prescribed aircraft” means:

- (a) an Australian aircraft, whether it is in Australia or not; or
- (b) any other aircraft that is in Australia or engaged in a prescribed flight; or
- (c) a visiting government aircraft.

“prescribed flight” means a flight of an aircraft:

- (a) in the course of trade and commerce with other countries or among the States; or
- (b) within a Territory, between 2 Territories or between a State and a Territory.

“Protocol” means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, being the Protocol to which Australia acceded on 23 October 1990, and whose English text is set out in Schedule 3.

“remand” includes further remand.

“repealed Acts” means the Acts repealed by section 53.

“threaten” has the meaning given in section 4.

“Tokyo Convention” means the Convention on Offences and certain other Acts committed on board Aircraft, to which Australia acceded on 22 June 1970, and whose English text is set out in Schedule 4.

“unlawful act”, in Division 4 of Part 2, means an act described in section 10.

“visiting government aircraft” means an aircraft that:

- (a) is owned or operated by the government of a foreign country, or a part of such a country; and
- (b) is in Australia, or is engaged in a flight that started outside Australia and ends, or is intended to end, in Australia.



*Meaning of “threaten”*

4. For the purposes of this Act, a person is taken to threaten to do an act if the person makes any statement or does anything else indicating, or from which it could reasonably be inferred, that it is his or her intention to do that act.

*Aircraft flights: when do they start?*

5. For the purposes of this Act, a flight of an aircraft is taken to start:
- (a) when the last external door is closed in preparation for the first movement of the aircraft for the purpose of taking off on the flight; or
  - (b) if the aircraft moves, before all the external doors are closed, for the purpose of taking off on the flight—when it first so moves.

*Aircraft flights: when do they end?*

6. (1) Subject to this section, a flight of an aircraft is, for the purposes of this Act, taken to end when the first external door is opened after the aircraft comes to rest on the next landing it makes after starting the flight.
- (2) Where an aircraft makes a forced landing, its flight is, for the purposes of this Act, taken to end when the competent authorities take over responsibility for the aircraft and for the persons and property on board.
- (3) If, after an aircraft starts a flight:
- (a) the aircraft is destroyed before the flight is taken to have ended under subsection (1) or (2); or
  - (b) the flight is abandoned;

the flight is, for the purposes of this Act, taken to end when the aircraft is destroyed, or the flight is abandoned, as the case requires.

*Aircraft flights between 2 parts of Australia*

7. For the purposes of this Act, a flight of an aircraft is taken to be a flight between 2 parts of Australia if the flight starts in one of those parts and ends, or is, when the flight starts, intended to end, in the other part.

*Aircraft flights within a Territory*

8. For the purposes of this Act, a flight of an aircraft is taken to be a flight within a Territory if the flight starts in the Territory and ends, or is, when the flight

starts, intended to end, in the Territory, whether or not the aircraft goes, or will or may go, outside the Territory during the flight.

*What is hijacking?*

9. For the purposes of Division 1 of Part 2, a person hijacks an aircraft if, while on board the aircraft, the person:

- (a) unlawfully seizes, or exercises control of, the aircraft by force or threat of force, or by any other form of intimidation; or
- (b) attempts to do an act mentioned in paragraph (a); or
- (c) is an accomplice of a person who does, or attempts to do, any such act.

*What is an unlawful act?*

10. (1) For the purposes of Division 4 of Part 2, a person commits an unlawful act if he or she:

- (a) does any of the following things without lawful excuse:
  - (i) commits an act of violence against anyone on board an aircraft in flight, being an act likely to endanger the safety of the aircraft;
  - (ii) destroys an aircraft in service, or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
  - (iii) attempts to do an act mentioned in subparagraph (i) or (ii); or
- (b) is an accomplice of anyone who does an act mentioned in paragraph (a).

(2) For the purposes of Division 4 of Part 2, a person commits an unlawful act if he or she:

- (a) does any of the following things without lawful excuse:
  - (i) places, or causes to be placed, on an aircraft in service a substance or thing that is likely to destroy the aircraft;

- (ii) places, or causes to be placed, on an aircraft in service a substance or thing that is likely to cause damage to the aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (iii) destroys or damages any navigation facilities or interferes with their operation, being destruction, damage or interference that is likely to endanger the safety of an aircraft in flight;
- (iv) communicates information which he or she knows to be false, thereby endangering the safety of an aircraft in flight;
- (v) attempts to do an act mentioned in subparagraph (i), (ii), (iii) or (iv); or

(b) is an accomplice of anyone who does an act mentioned in paragraph (a).

#### Division 3—Extension of Act to external Territories etc.

##### *Extension of Act to external Territories*

11. This Act extends to the external Territories.

##### *Extra-territorial operation*

12. This Act, and the provisions of the Tokyo Convention given the force of law by this Act, extend, unless the contrary intention appears:

- (a) to acts, omissions, matters and things outside Australia, whether or not in or over a foreign country; and
- (b) to all persons, irrespective of their nationality or citizenship.

## PART 2—OFFENCES

### Division 1—Hijacking and other acts of violence on board aircraft

#### *Hijacking an offence*

13. (1) A person who hijacks an aircraft is guilty of an indictable offence if any of the following applies when the hijacking is committed:

- (a) the aircraft is in flight, within the meaning of the Hague Convention, and the Hague Convention requires Australia to make the hijacking punishable;
  - (b) the aircraft is engaged in a prescribed flight;
  - (c) the aircraft is a Commonwealth aircraft;
  - (d) the aircraft is a visiting government aircraft.
- (2) A person who hijacks an aircraft is guilty of an indictable offence if:
- (a) the hijacking is committed outside Australia; and
  - (b) the person who commits the hijacking is an Australian citizen; and
  - (c) the aircraft would, if the Hague Convention applied, be considered to be in flight.
- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for life.
- (4) A person cannot be tried for an offence against subsection (1) merely because paragraph (1)(a) applies, unless Article 4 of the Hague Convention requires Australia to establish its jurisdiction over the offence.

*Other acts of violence*

14. (1) Where:

- (a) a person on board an aircraft commits an act of violence against all or any of the passengers or crew; and
- (b) the act would, if committed in the Jervis Bay Territory, be an offence against a law in force in that Territory (other than this Act);

the person is guilty of an offence if any of the following applies when the act is committed:

- (c) Article 4 of the Hague Convention requires Australia to establish its jurisdiction over the act;
- (d) the aircraft is engaged in a prescribed flight;

- (e) the aircraft is a Commonwealth aircraft;
- (f) the aircraft is a visiting government aircraft;
- (g) the aircraft is outside Australia but the person who does the act is an Australian citizen.

(2) The punishment for an offence against subsection (1) is the same as that for the offence mentioned in paragraph (1)(b).

(3) This section extends to an act of violence that was committed, or may have been committed, in the Jervis Bay Territory.

#### Division 2—Other offences on board aircraft engaged in certain flights

##### *Certain offences committed on aircraft*

15. (1) Where:

- (a) a person on board a Division 2 aircraft does or omits to do anything; and
- (b) the act or omission, if it had taken place in, or in a public place in, the Jervis Bay Territory, would be an offence against:
  - (i) a law of the Commonwealth in force in that Territory; or
  - (ii) the Crimes Act 1900 of the Australian Capital Territory in its application to the Jervis Bay Territory;

the person is guilty of an offence.

(2) The punishment for an offence against subsection (1) is the same as that for the offence mentioned in paragraph (1)(b).

(3) This section extends to an act or omission that took place, or may have taken place, in the Jervis Bay Territory.

### Division 3—Offences affecting aircraft and the safe operation of aircraft

#### *Taking control of aircraft*

16. (1) A person who, without lawful excuse, takes or exercises control (whether directly or through an accomplice) of a Division 3 aircraft is guilty of an offence punishable on conviction by imprisonment for 7 years.

(2) A person who, without lawful excuse, takes or exercises control (whether directly or through an accomplice) of a Division 3 aircraft and who does so while anyone else, other than an accomplice of the person, is on board the aircraft, is guilty of an offence punishable on conviction by imprisonment for 14 years.

(3) A person who, without lawful excuse, takes or exercises control (whether directly or through an accomplice) of a Division 3 aircraft and who does so:

(a) by force or threat of force, or by any trick or false pretence; and

(b) while anyone else, other than an accomplice of the person, is on board the aircraft;

is guilty of an offence punishable on conviction by imprisonment for 20 years.

#### *Destruction of aircraft*

17. A person must not, without lawful excuse, wilfully destroy a Division 3 aircraft.

Penalty: Imprisonment for 14 years.

#### *Destruction of aircraft with intent to kill*

18. A person who destroys a Division 3 aircraft with the intention of causing anyone's death, or with reckless indifference to the safety of anyone's life, is guilty of an indictable offence punishable on conviction by imprisonment for life.

#### *Prejudicing safe operation of aircraft*

19. A person must not do anything capable of prejudicing the safe operation of a Division 3 aircraft with the intention of prejudicing the safe operation of the aircraft.

Penalty: Imprisonment for 14 years.

*Prejudicing safe operation of aircraft with intent to kill etc.*

20. A person who does anything capable of prejudicing the safe operation of a Division 3 aircraft:

- (a) with the intention of prejudicing the safe operation of the aircraft; and
- (b) with the intention of causing anyone's death, or with reckless indifference to the safety of anyone's life;

is guilty of an indictable offence punishable on conviction by imprisonment for life.

*Assaulting crew*

21. A person must not, while on board a Division 3 aircraft, assault, threaten with violence, or otherwise intimidate, a member of the crew of the aircraft so as to:

- (a) interfere with the member's performance of functions or duties connected with the operation of the aircraft; or
- (b) lessen the member's ability to perform those functions or duties.

Penalty: Imprisonment for 14 years.

*Endangering safety of aircraft*

22. A person must not, while on board a Division 3 aircraft, do anything that, to the person's knowledge, is likely to endanger the safety of the aircraft.

Penalty: Imprisonment for 7 years.

*Dangerous goods*

23. (1) A person must not:

- (a) carry or place dangerous goods on board a Division 3 aircraft; or
- (b) deliver dangerous goods to anyone else for the purpose of placing the goods on board such an aircraft; or

(c) have dangerous goods in his or her possession on board such an aircraft.

Penalty:

(a) in the case of an individual—imprisonment for 7 years; and

(b) in the case of a body corporate—\$100,000.

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

(a) anything done with the consent of the owner or operator of the aircraft given with knowledge of the nature of the goods concerned; or

(b) the carrying or placing of dangerous goods, on board an aircraft with permission granted under the *Air Navigation Act 1920* or regulations made under that Act, the *Civil Aviation Act 1988* or regulations made under that Act; or

(c) in the case of a Commonwealth aircraft (other than one being used for commercial transport operations)—the carrying or placing of dangerous goods on board the aircraft by:

(i) a person appointed or engaged under the *Public Service Act 1999*, in the performance of his or her duties; or

(ii) an officer of, or a person employed by, an authority of the Commonwealth in the performance of his or her duties; or

(iii) a person acting in accordance with the instructions of such an officer or person given in the performance of his or her duties; or

(d) in the case of a defence aircraft—the carrying or placing of dangerous goods on board the aircraft by:

(i) a member of the Defence Force in the performance of his or her duties; or

(ii) a person acting in accordance with the instructions of such a member given in the performance of the member's duties.



*Threats and false statements*

24. (1) A person must not threaten to destroy, damage or endanger the safety of a Division 3 aircraft, or to kill or injure anyone on board such an aircraft.

Penalty: Imprisonment for 2 years.

(2) A person must not make a statement or communicate information, being a statement or information that he or she knows to be false, to the effect, or from which it can reasonably be inferred, that there has been, is or is to be, a plan, proposal, attempt, conspiracy or threat:

- (a) to take or exercise control, by force, of a Division 3 aircraft; or
- (b) to destroy, damage or endanger the safety of such an aircraft; or
- (c) to kill or injure anyone on board such an aircraft.

Penalty: Imprisonment for 2 years.

Division 4—Offences relating to the safety of civil aviation and acts of violence at certain airports

*Endangering the safety of aircraft in flight*

25. (1) A person who commits an unlawful act of the kind mentioned in subsection 10(1) is guilty of an offence if any of the following applies:

- (a) the Montreal Convention requires Australia to make the act punishable;
- (b) the aircraft concerned is:
  - (i) an aircraft in service in the course of, or in connection with, a prescribed flight; or
  - (ii) a Commonwealth aircraft; or
  - (iii) a defence aircraft; or
  - (iv) a visiting government aircraft;
- (c) the person is an Australian citizen who commits the act outside Australia.

Penalty: Imprisonment for 14 years.

(2) A person who commits an unlawful act of the kind mentioned in subsection 10(2) is guilty of an offence if any of the following applies:

(a) the Montreal Convention requires Australia to make the act punishable;

(b) except where paragraph (c) applies, the aircraft concerned is:

(i) an aircraft in service in the course of, or in connection with, a prescribed flight; or

(ii) a Commonwealth aircraft; or

(iii) a defence aircraft; or

(iv) a visiting government aircraft;

(c) in the case of an act relating to air navigation facilities—the facilities are used in connection with:

(i) prescribed flights; or

(ii) flights of Commonwealth aircraft; or

(iii) flights of defence aircraft; or

(iv) flights of visiting government aircraft;

(d) the person is an Australian citizen who commits the act outside Australia.

Penalty: Imprisonment for 7 years.

(3) A person cannot be tried for an offence against subsection (1) or (2) merely because paragraph (1)(a) or (2)(a), as the case may be, applies unless Article 5 of the Montreal Convention requires Australia to establish its jurisdiction over the offence.

*Acts of violence at certain airports*

26. (1) A person who:

(a) without lawful excuse, uses a substance or thing to commit an act of violence against anyone at a prescribed airport, being an act that:

(i) causes or is likely to cause serious injury or death; and

(ii) endangers, or is likely to endanger the safe operation of the airport or the safety of anyone at the airport; or

(b) attempts to do anything covered by paragraph (a); or

(c) is an accomplice of anyone who does or attempts to do any such thing;

is guilty of an offence if the Montreal Convention, when read together with the Protocol, requires Australia to make the act punishable and Article 5 of that Convention, when so read, requires Australia to establish its jurisdiction over the offence.

Penalty: Imprisonment for 15 years.

(2) A person who:

(a) without lawful excuse does any of the following things:

(i) destroys or seriously damages the facilities of a prescribed airport;

(ii) destroys or seriously damages any aircraft not in service that is at a prescribed airport;

(iii) disrupts the services of a prescribed airport;

and by doing so endangers, or is likely to endanger, the safe operation of the airport or the safety of anyone at the airport; or

(b) attempts to do an act mentioned in paragraph (a); or

(c) is an accomplice of anyone who does or attempts to do such an act;

is guilty of an offence if either of the following applies:

(d) the Montreal Convention, when read together with the Protocol, requires Australia to make the act concerned punishable;

(e) if the act concerned relates to an aircraft—the aircraft is in Australia, or is a Commonwealth aircraft or a defence aircraft, or the act is committed by an Australian citizen, whether in Australia or not.

Penalty: Imprisonment for 10 years.

(3) A person cannot be tried for an offence against subsection (2) merely because paragraph (2)(d) applies, unless Article 5 of the Montreal Convention, when read together with the Protocol, requires Australia to establish its jurisdiction over the offence.

Division 5—Offences relating to Commonwealth aerodromes and air navigation facilities

*Endangering safety of aerodromes etc.*

27. A person must not do anything that he or she knows is likely to endanger the safety of:

(a) a Commonwealth aerodrome, or any part of a Commonwealth aerodrome, or any Commonwealth air navigation facilities; or

(b) anyone who is, or may be, within the limits of a Commonwealth aerodrome or any Commonwealth air navigation facilities.

Penalty: Imprisonment for 7 years.

*Threats and false statements*

28. (1) A person must not threaten to:

(a) destroy, damage or endanger the safety of a Commonwealth aerodrome, or any part of a Commonwealth aerodrome, or any Commonwealth air navigation facilities; or

(b) kill or injure anyone who is, or may be, within the limits of a Commonwealth aerodrome or any Commonwealth air navigation facilities.

(2) A person must not make a statement or communicate information, being a statement or information that he or she knows to be false, to the effect, or from which it can reasonably be inferred, that there has been, is, or will be, a plan, proposal, attempt, conspiracy or threat:

(a) to take or exercise control, by force, of a Commonwealth aerodrome, or part of a Commonwealth aerodrome, or any Commonwealth air navigation facilities; or

(b) to destroy, damage or endanger the safety of a Commonwealth aerodrome, or part of a Commonwealth aerodrome, or any Commonwealth air navigation facilities; or

(c) to kill or injure anyone who is, or may be, within the limits of a Commonwealth aerodrome or any Commonwealth air navigation facilities.

Penalty: Imprisonment for 2 years

### PART 3—PROVISIONS GIVING EFFECT TO THE TOKYO CONVENTION

#### *Certain provisions of Tokyo Convention to have force of law*

29. (1) The following provisions of the Tokyo Convention have the force of law:

(a) the provisions of Chapter III;

(b) the provisions of paragraph 1 of Article 16;

(c) the provisions of Chapter I, to the extent that they affect the application or interpretation of the provisions of Chapter III or paragraph 1 of Article 16.

(2) For the purposes of a provision of the Tokyo Convention mentioned in subsection (1), an aircraft that is the subject of a notice given before, on or after the commencing day under Article 18 of the Convention is taken to be registered in the State designated in the notice.

(3) For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under a provision of the Tokyo Convention mentioned in subsection (1) is taken not to be a matter arising directly under a treaty.

#### *Authorised person may accept delivery of persons*

30. (1) An authorised person may accept delivery of a person delivered under paragraph 1 of Article 9 of the Tokyo Convention.

(2) An authorised person who accepts delivery of a person must cause the person:

(a) to be brought, as soon as practicable, before a magistrate to be dealt with under this Act; and

(b) to be held in custody until the person can be so brought before a magistrate.

*Application of Migration Act etc.*

31. (1) Where a person has been:

(a) disembarked in Australia under paragraph 1 of Article 8 of the Tokyo Convention; or

(b) delivered to a person in Australia under paragraph 1 of Article 9 of that Convention; or

(c) taken into custody in Australia under subsection 33(1) of this Act or subsection 8(2) of the *Civil Aviation (Offenders on International Aircraft) Act 1970* in respect of an act mentioned in paragraph 1 of Article 11 of that Convention;

and Australia is entitled, under that Convention, to exercise, in relation to the person, the powers of a State of landing under paragraph 1 of Article 14, the person may be deported under the *Migration Act 1958* or the *Immigration Act 1980* of Norfolk Island, as the case may be.

(2) Nobody is liable to be prosecuted for an offence under the *Migration Act 1958*, or under the *Immigration Act 1980* of Norfolk Island, that is committed solely as a result of anyone having been:

(a) disembarked in Australia under paragraph 1 of Article 8 of the Tokyo Convention; or

(b) delivered to a person in Australia under paragraph 1 of Article 9 of that Convention; or

(c) taken into custody in Australia under subsection 33(1) of this Act or subsection 8(2) of the *Civil Aviation (Offenders on International Aircraft) Act 1970* in respect of an act mentioned in paragraph 1 of Article 11 of that Convention.

(3) This section extends to anything done before the commencing day.

PART 4—RESTORING CONTROL OF AIRCRAFT AND DEALING WITH OFFENDERS

*Restoring control of aircraft*

32. (1) Where Australia is required, under a Convention provision, to take all appropriate measures to restore control of an aircraft to its lawful commander, or to preserve the lawful commander's control of the aircraft, an authorised person may take such action, and in particular may use such force and assistance, as is reasonably necessary to ensure compliance with the requirement.

(2) In this section:

“Convention provision” means:

- (a) paragraph 1 of Article 11 of the Tokyo Convention; or
- (b) paragraph 1 of Article 9 of the Hague Convention.

*Taking offenders into custody*

33. (1) Where an authorised person reasonably suspects that a person has committed a prohibited act, the authorised person may cause the person to be taken into custody.

(2) An authorised person who causes a person to be taken into custody must cause the person:

- (a) to be brought, as soon as practicable, before a magistrate to be dealt with under this Act; and
- (b) to be held in custody until the person can be so brought before a magistrate.

(3) This section does not prevent the arrest of a person under any other law for an offence against this Act.

(4) In this section:

“prohibited act” means:

- (a) a Convention offence; or
- (b) an act resulting in Article 6 of the Hague Convention applying in respect of the relevant person; or

(c) an act resulting in Article 6 of the Montreal Convention applying in respect of the relevant person; or

(d) an act mentioned in paragraph 1 of Article 11 of the Tokyo Convention (other than an act covered by paragraph (a), (b) or (c)), or an attempt to do such an act.

*Arrest of offenders*

34. (1) The person in command of a prescribed aircraft may, with such assistance as is reasonably necessary, arrest, without warrant, anyone whom he or she finds committing, or reasonably suspects has committed, an offence against a provision of Part 2 on board the aircraft.

(2) Where a person is arrested under subsection (1), the person in command of the prescribed aircraft concerned, or anyone authorised by the person in command, may hold the arrested person in custody until he or she can be taken into other custody under section 33 or brought before a magistrate to be dealt with in accordance with law.

(3) This section does not prevent the arrest of a person under any other law for an offence against this Act.

*Restraining persons from committing offences*

35. The person in command of a prescribed aircraft may, with such assistance as is necessary:

(a) keep anyone who is on board the aircraft under restraint or in custody until the next landing of the aircraft; and

(b) remove anyone from the aircraft at any place where the aircraft is on land;

if the person in command thinks it necessary to do so to prevent an offence against this Act being committed on board the aircraft.

*Arrest of persons who escape from custody*

36. If a person in custody under section 30, 33 or 34 in a State or Territory escapes from that custody, the person may be:

(a) arrested in the same way as anyone who escapes from lawful custody may be arrested under the law of that State or Territory; and



- (b) returned to the custody from which he or she escaped.

*Preliminary inquiries*

37. (1) Where:

- (a) a person is taken into custody under section 30, 33 or 34, or is arrested on a charge of a Convention offence; and
- (b) the Minister or an authorised person thinks that an inquiry under this section is appropriate;

the Minister or authorised person may, by written notice, authorise a magistrate to hold an inquiry into the facts relating to the alleged offence.

(2) Upon receipt of a notice, the magistrate must hold an inquiry accordingly.

(3) The magistrate of a State or Territory who holds an inquiry must take the evidence of each witness who gives evidence in the inquiry in the same way as if the witness were giving evidence on a charge against someone for an indictable offence against the law in force in that State or Territory.

(4) The evidence of a witness may be taken in the presence or absence of the person taken into custody or charged with the offence.

(5) The evidence of a witness must not be taken in the absence of the person taken into custody or charged with the offence unless the magistrate is satisfied that:

- (a) there is good reason why the person cannot be present, or should not be permitted to be present; or
- (b) the person has refused to be present.

(6) The magistrate must:

- (a) cause a written record to be made of evidence taken under this section; and
- (b) certify at the end of the record that the evidence was taken by the magistrate, indicating whether, and to what extent, the evidence was so taken in the presence or absence of the person taken into custody or charged; and
- (c) cause the certified record to be sent to the Attorney-General.

*Proceedings before magistrate on warrant for arrest*

38. Where:

(a) a person is brought or appears before a magistrate under this Act; and

(b) a warrant for the arrest of the person for the purposes of criminal or extradition proceedings in relation to an offence under this Act is produced to the magistrate;

the magistrate must make such order as is appropriate for the execution of the warrant.

*Proceedings before magistrate where warrant not produced*

39. (1) Where:

(a) a person is brought or appears before a magistrate under this Act; and

(b) a warrant of the kind described in paragraph 38(b) for the arrest of the person is not produced to the magistrate;

the magistrate must:

(c) if satisfied that more time is reasonably required for deciding whether criminal or extradition proceedings should be started against the person—remand the person, either in custody or on bail, for a period not longer than 7 days; or

(d) if not so satisfied—order that the person be released from custody.

(2) A person remanded for a period under subsection (1) must be brought before a magistrate at the end of that period.

(3) If a person remanded on bail under subsection (1) does not appear before a magistrate in accordance with the person's recognizance, a magistrate may issue a warrant for the arrest of the person and for bringing the person before a magistrate.

*Release of person remanded in custody*

40. If a person remanded in custody under section 39 is still held in that custody on the day 2 months after the date of the first of the orders under section 39 under which the person has been held, the person must be released.

## PART 5—MISCELLANEOUS

### *Evidence: record of evidence taken at preliminary inquiries*

41. (1) A document certified by the Attorney-General to be a record of evidence sent to the Attorney-General under section 37 is admissible in evidence in any of the following:

- (a) proceedings under section 38 or 39;
- (b) proceedings in respect of an offence against this Act;
- (c) proceedings under the *Extradition Act 1988*;

and, when so admitted, the evidence recorded in it is evidence in the proceedings.

(2) The magistrate or court hearing proceedings in respect of an offence against this Act must not admit in evidence a document mentioned in subsection (1), or any part of it, unless the magistrate or court thinks that, in all the circumstances, it would be unjust not to do so.

### *Evidence: entry into force of Conventions*

42. All courts must take judicial notice that:

- (a) the Hague Convention entered into force on 14 October 1971 under paragraph 3 of Article 13 of the Convention; and
- (b) the Montreal Convention entered into force on 28 January 1973 under paragraph 3 of Article 15 of the Convention; and
- (c) the Protocol entered into force on 6 August 1989 under paragraph 1 of Article VI of the Protocol; and
- (d) the Tokyo Convention entered into force on 4 December 1969 under paragraph 1 of Article 21 of the Convention.

### *Evidence of matters relating to Conventions*

43. (1) The Minister for Foreign Affairs may give a written certificate stating:

- (a) that a particular Convention entered into force for a particular country on a particular day; or
  - (b) that a particular country has not denounced a particular Convention; or
  - (c) that a particular country has denounced a particular Convention and the denunciation took effect on a particular day.
- (2) Australia may be named in a certificate under subsection (1).
- (3) A certificate given under subsection (1) is admissible in any proceedings as *prima facie* evidence of the matters stated in the certificate.
- (4) In this section:

*Convention* means the Hague Convention, the Montreal Convention, the Tokyo Convention or the Protocol.

*Evidence relating to notices to ICAO*

44. (1) The Minister administering the *Air Navigation Act 1920* may give a written certificate stating matters about a notice given to the International Civil Aviation Organisation, and communicated to Australia, under:

- (a) Article 5 of the Hague Convention; or
  - (b) Article 9 of the Montreal Convention.
- (2) A certificate given under subsection (1) is admissible in any proceedings as *prima facie* evidence of the matters stated in the certificate.

*Offences under subsections 14(1) and 15(1): are they indictable?*

45. The question whether an offence against subsection 14(1) or 15(1) must or may be prosecuted or dealt with on indictment or summarily must be decided under the law that would apply to a prosecution in the Jervis Bay Territory if the act or omission alleged to constitute the offence had occurred in that Territory.

*Alternative verdicts*

46. (1) A person charged before a court, other than a prescribed court, with an offence against subsection 14(1) or 15(1) may be found guilty of any other offence against that subsection of which the person could have been found guilty if:

(a) the act or omission alleged to constitute the first-mentioned offence had occurred in the Jervis Bay Territory; and

(b) the person had been charged with the first-mentioned offence before a prescribed court.

(2) In this section:

*prescribed court* means a court of the Australian Capital Territory exercising jurisdiction in or in relation to the Jervis Bay Territory.

### *Venue*

47. (1) If:

(a) a person is being tried in a State or Territory court for an offence against this Act committed on an aircraft in flight; and

(b) the act constituting the offence, or any part of the offence, is proved;

it must be presumed, in the absence of evidence to the contrary, that the act took place in that State or Territory.

(2) If the information, complaint or indictment relating to an offence against this Act committed on an aircraft in flight specifies the flight in which the aircraft was engaged, it need not also specify the part of Australia, or other place, where the offence was committed.

### *Change of venue*

48. (1) Where, after an indictment for an offence against this Act committed on an aircraft in flight is presented in a State or Territory court, and before a verdict is given:

(a) the defendant objects to the trial on the ground that the offence, if committed, was committed in another part of Australia; and

(b) the court is satisfied that the offence, if committed, was committed in that other part of Australia;

the court must immediately make the following orders:

(c) that the proceedings on the indictment be discontinued;

(d) if a jury is empanelled—that the jury be discharged;

(e) that the defendant appear before a specified court of the first-mentioned State or Territory at a specified time to be dealt with in accordance with this section.

(2) The court must not specify a time, for the purposes of paragraph (1)(e), that is later than 28 days after the day on which the order is made.

(3) Where a court makes an order under subsection (1), it may also:

(a) order that the defendant be kept in the custody specified in the order; or

(b) admit the defendant to bail on such recognizances as it thinks fit.

(4) If, before the time when the defendant is to appear before a court, the Attorney-General or the Director of Public Prosecutions notifies that court that an indictment will not be filed against the defendant in a court of another part of Australia, the notified court must, as soon as practicable after it is notified, make an order:

(a) discharging the defendant from the obligation to appear before that court at that time; and

(b) if the defendant is in custody—directing that the defendant be released; and

(c) if the defendant has been admitted to bail—directing that the relevant recognizances be discharged.

(5) If, at or before the time when the defendant is to appear before a court, the Attorney-General or the Director of Public Prosecutions notifies that court that an indictment has been filed against the defendant in a court of another part of Australia, the notified court must make an order directing:

(a) that the defendant be taken, as soon as practicable and in the custody of such person as it directs, to the part of Australia where the indictment was filed; and

(b) that the defendant there be delivered to the custody of a person who has authority to arrest the defendant;

and may make such other orders as it thinks necessary for carrying out that order.

(6) An order under subsection (5) must be made:

(a) if the defendant is in custody—immediately after the court is notified under that subsection; and

(b) in any other case—as soon as practicable after the time when the defendant is required to appear before the court.

(7) If:

(a) the court before which the defendant is to appear is not notified by the Attorney-General or the Director of Public Prosecutions under subsection (4) or (5); and

(b) the defendant is held in custody;

the court must, at the time when the defendant is required to appear before it, make an order directing that the defendant be released.

(8) Where an order has been made under paragraph (1)(c) in relation to an indictment, the proceedings on the indictment, and the order, do not prevent or prejudice any other indictment or any information against the defendant on the same charge or any other charge.

(9) The jurisdiction of a court under subsections (1) and (3) may be exercised by the court constituted by a single judge.

(10) The jurisdiction of a court under subsection (4), (5) or (7) may be exercised by the court constituted by a single judge or magistrate.

#### *Search powers*

49. (1) If, in relation to a Division 2 aircraft or a Division 3 aircraft, the person in command of the aircraft, or an authorised person, reasonably suspects that an offence against Division 2 or 3 of Part 2 has been, is being or may be committed on board, or in relation to, the aircraft, he or she may, with such assistance as is reasonably necessary, search or cause to be searched:

(a) the aircraft and any person, luggage or freight on board; and

(b) in the case of a Division 3 aircraft that is not engaged in a flight—any person who is about to board the aircraft and any luggage or freight that is about to be placed on board.

(2) If an authorised person reasonably suspects that an offence against Division 5 of Part 2 has been, is being or may be committed in respect of a Commonwealth

aerodrome, or Commonwealth air navigation facilities, he or she may, with such assistance as is reasonably necessary, search or cause to be searched:

(a) any person, luggage, freight or vehicle found within the limits, or in the vicinity, of the aerodrome or facilities; or

(b) any area in the vicinity of the aerodrome or facilities.

(3) A person may only be searched under this section by someone who is of the same sex.

*Operation of other laws*

50. (1) Subject to this section, this Act does not exclude or limit the operation of any other law of the Commonwealth, or of a State or Territory.

(2) If:

(a) a person's act or omission is both an offence against this Act and an offence against another Act or against a law of a State or Territory; and

(b) the person is convicted of either of those offences;

the person cannot also be convicted of the other offence.

(3) If a person has been convicted of an offence in respect of an act or omission under the law of a foreign country, the person cannot also be convicted of an offence against this Act in respect of that act or omission.

*Arrangements about magistrates*

51. (1) The Governor-General may:

(a) arrange with the Governor of a State for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as magistrates of that State; or

(b) arrange with the Administrator of the Northern Territory or of Norfolk Island for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as magistrates of the Northern Territory or of Norfolk Island, as the case may be.

(2) The Minister may arrange with the Chief Minister for the Australian Capital Territory for the performance of the functions of a magistrate under this Act by all



or any of the persons who from time to time hold office as magistrates of that Territory.

(3) A copy of each arrangement under this section must be published in the *Gazette*.

### *Regulations*

52. (1) 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 for carrying out or giving effect to this Act or to the Hague Convention, the Montreal Convention, the Tokyo Convention or the Protocol;

and, in particular, may make regulations:

- (c) about the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation and the payment of witnesses' expenses in proceedings before magistrates under this Act; and
- (d) about any other matter of practice or procedure in connection with such proceedings; and
- (e) about the protection and immunity of magistrates, legal practitioners and witnesses in connection with such proceedings; and
- (f) imposing pecuniary penalties of not more than \$500, for offences against the regulations; and
- (g) making such transitional and savings provisions as are necessary or convenient as a result of the repeal of all or any of the repealed Acts and the enactment of this Act.

(2) Despite section 53, regulations made under paragraph (1)(g) may provide for the continued operation of specified provisions of any of the repealed Acts in relation to prescribed persons or matters, or in prescribed circumstances.

### *Repeals*

53. The following Acts are repealed:

- (a) the *Civil Aviation (Offenders on International Aircraft) Act 1970*;
- (b) the *Crimes (Aircraft) Act 1963*;
- (c) the *Crimes (Hijacking of Aircraft) Act 1972*;
- (d) the *Crimes (Protection of Aircraft) Act 1973*.

*Transitional and savings*

54. (1) A person who, immediately before the commencing day, was an authorised person for the purposes of a provision of the *Civil Aviation (Offenders on International Aircraft) Act 1970*, the *Crimes (Hijacking of Aircraft) Act 1972* or the *Crimes (Protection of Aircraft) Act 1973*, is, on and after that day, taken to be an authorised person for the purposes of the corresponding provision of this Act unless and until the Minister, by written instrument, determines otherwise.

(2) A person who, immediately before the commencing day, was an authorised person for the purposes of section 26 of the *Crimes (Aircraft) Act 1963* is, on and after that day, taken to be appointed to be an authorised person for the purposes of section 49 of this Act.

(3) A notice published in the *Gazette* under section 19 of the *Civil Aviation (Offenders on International Aircraft) Act 1970*, section 25 of the *Crimes (Hijacking of Aircraft) Act 1972*, or section 22 of the *Crimes (Protection of Aircraft) Act 1973*, and in force immediately before the commencing day, continues to have effect on and after that day as if it were a notice published in the *Gazette* under section 43 of this Act.

(4) Subject to section 31 and the regulations, where, before the commencing day, a person had been arrested, taken into custody or remanded in custody, or was being held in custody, under a provision of the *Civil Aviation (Offenders on International Aircraft) Act 1970*, the *Crimes (Hijacking of Aircraft) Act 1972* or the *Crimes (Protection of Aircraft) Act 1973*, that Act continues to apply in relation to the person on and after that day as if it had not been repealed.

...

## 6. CRIMES (SHIPS AND FIXED PLATFORMS) ACT 1992<sup>8</sup>

An Act to make provision in relation to certain crimes against the safety of ships and of fixed platforms

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<sup>8</sup> Act No. 173 of 1992. Schedule 1 reproducing the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Schedule 2 reproducing the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf are not reproduced here. The full text of the Act is available from the Codification Division, Office of Legal Affairs.

## PART 1-PRELIMINARY

### *Short title*

1. This Act may be cited as the Crimes (Ships and Fixed Platforms) Act 1992.

### *Commencement*

2. (1) Parts 1 and 4 commence on the day on which this Act receives the Royal Assent.  
  
(2) Part 2 commences on a day to be fixed by Proclamation, being a day not earlier than the day on which the Convention enters into force for Australia.  
  
(3) Part 3 commences on a day to be fixed by Proclamation, being a day not earlier than the day on which the Protocol enters into force for Australia.

### *Interpretation*

3. (1) In this Act, unless the contrary intention appears:

"Australian ship" has the same meaning as in the *Shipping Registration Act 1981*;

"Convention" means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988, a copy of the English text of which is set out in Schedule 1;

"Convention State" means a State Party to the Convention, but does not include Australia;

"fixed platform" means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration for, or exploitation of, resources or for other economic purposes;

"foreign country" means a place outside Australia that is:

- (a) an independent sovereign state; or
- (b) an area of land (whether or not it is self-governing) that is not part of an independent sovereign state;

"international voyage" means a voyage that passes, or is scheduled to pass:

- (a) through seas beyond the territorial sea of any state; or
- (b) through the territorial seas of more than one state;

"private ship" means a ship that is not a warship or other ship operated for naval, military, customs or law enforcement purposes by Australia or by a foreign state;

"Protocol" means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988, a copy of the English text of which is set out in Schedule 2;

"Protocol State" means a State Party to the Protocol, but does not include Australia;

"ship" means a vessel of any type not permanently attached to the sea-bed, and includes any dynamically supported craft, submersible, or any other floating craft, other than a vessel that has been withdrawn from navigation or is laid up.

(2) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the Convention or Protocol, whether or not an express meaning is given to it by the Convention or Protocol and whether or not the Convention or the Protocol has entered into force.

*Act extends to external Territories*

4. This Act extends to all external Territories.

*Extraterritorial application*

5. This Act extends, unless the contrary intention appears:

- (a) to acts, matters and things outside Australia; and
- (b) to all persons, whatever their nationality or citizenship.

*Effect of this Act on other laws*

6. (1) Subject to subsection (2), this Act does not exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

(2) Sections 5 and 7 of the Crimes Act 1914 do not apply in relation to offences against sections 17 and 28.

*Convictions under foreign laws*

7. If a person has been convicted in a foreign country of an offence against the law of that country in respect of any conduct, the person is not liable to be convicted of an offence against this Act in respect of that conduct.

## PART 2-PROVISIONS RELATING TO THE CONVENTION

### Division 1-Offences in relation to ships

#### *Seizing a ship*

8. A person must not, without lawful excuse, take possession of, or take or exercise control over, a private ship by the threat or use of force or by any other kind of intimidation.

Penalty: Life imprisonment.

#### *Acts of violence*

9. A person must not perform an act of violence against a person on board a private ship knowing that the act is likely to endanger the safe navigation of the ship.

Penalty: 15 years imprisonment.

#### *Destroying or damaging a ship*

10. (1) A person must not, without lawful excuse, destroy a private ship.

Penalty: Life imprisonment.

(2) A person must not cause damage to a private ship or its cargo knowing that it is likely to endanger the safe navigation of the ship.

Penalty: Life imprisonment.

#### *Placing destructive devices on a ship*

11. (1) A person must not, without lawful excuse, place or cause to be placed on a private ship, by any means, a device or substance that is likely to destroy the ship.

(2) A person must not place or cause to be placed on a private ship, by any means, a device or substance that is likely to cause damage to the ship or its cargo knowing that it is likely to endanger the safe navigation of the ship.

Penalty: 15 years imprisonment.

#### *Destroying or damaging navigational facilities*

12. A person must not destroy or seriously damage maritime navigational facilities or seriously interfere with their operation if that act is likely to endanger the safe navigation of a private ship.

Penalty: 15 years imprisonment.

*Giving false information*

13. A person must not knowingly endanger the safe navigation of a private ship by communicating false information.

Penalty: 15 years imprisonment.

*Causing death*

14. A person who kills a person in connection with the commission or attempted commission of an offence against any of sections 8 to 13 is guilty of an offence.

Penalty: Life imprisonment.

*Causing grievous bodily harm*

15. A person who causes grievous bodily harm to a person in connection with the commission or attempted commission of an offence against any of sections 8 to 13 is guilty of an offence.

Penalty: 15 years imprisonment.

*Causing injury to a person*

16. A person who injures a person in connection with the commission or attempted commission of an offence against any of sections 8 to 13 is guilty of an offence.

Penalty: 10 years imprisonment.

*Threatening to endanger a ship*

17. (1) A person must not threaten to do an act that would constitute an offence against section 9, 10 or 12 with intent to compel an individual, a body corporate or a body politic to do or refrain from doing an act, if that threat is likely to endanger the safe navigation of the ship concerned.

Penalty: 2 years imprisonment.

(2) For the purposes of this section, a person is taken to threaten to do an act if the person makes any statement or does anything else indicating, or from which it could reasonably be inferred, that it is his or her intention to do that act.

*Commencement of proceedings*

18. (1) Proceedings must not be commenced against a person for an offence against this Division unless, when the alleged offence was committed:

- (a) the ship concerned was:
  - (i) on, or scheduled to engage in, an international voyage; or
  - (ii) in the territorial sea or internal waters of a foreign country; and
- (b) the alleged offence had an Australian element or a Convention State element.

(2) Paragraph (1)(a) does not apply if the person is in Australia only because he or she was extradited to Australia in relation to the acts that constituted the offence.

(3) For the purposes of this section, an offence against this Division had an Australian element if:

- (a) the ship concerned was an Australian ship; or
- (b) the alleged offender was a national of Australia.

(4) For the purposes of this section, an offence against this Division had a Convention State element if one of the following circumstances applied:

- (a) the ship concerned was a ship flying the flag of a Convention State;
- (b) the ship concerned was in the territorial sea or internal waters of a Convention State;
- (c) the alleged offender was a national of a Convention State;
- (d) the alleged offender was stateless and was habitually resident in a Convention State that had extended its jurisdiction under Article 6(2)(a) of the Convention;
- (e) during the commission of the alleged offence, a national of a Convention State was seized, threatened, injured or killed and the Convention State had extended its jurisdiction under Article 6(2)(b) of the Convention;
- (f) the alleged offence was committed in an attempt to compel a Convention State to do or abstain from doing any act and the Convention

State had extended its jurisdiction under Article 6(2)(c) of the Convention.

(5) In this section:

"offence against this Division" includes an offence arising under section 5 of the Crimes Act 1914 (aiders and abettors) or section 7 of that Act (attempts) in relation to an offence against any of sections 8 to 16.

## Division 2-Powers of ship's master

### *Arrest of offenders etc.*

19. (1) A ship's master may arrest and hold in custody any person whom he or she has reasonable grounds to believe has committed an offence against Division 1.

(2) A ship's master may hold an alleged offender in custody only until he or she can deliver the alleged offender to:

- (a) the appropriate authorities of any Convention State; or
- (b) another appropriate authority.

### *Ship's master may deliver alleged offenders to Convention State*

20. (1) A ship's master may deliver to the appropriate authorities of any Convention State any person whom he or she has reasonable grounds to believe has committed an offence against Division 1.

(2) A ship's master who intends to deliver a person under subsection (1) must notify the appropriate authorities of the Convention State:

- (a) of his or her intention to deliver the person to the authorities; and
- (b) of his or her reasons for intending to do so.

(3) A notification under subsection (2) must be given:

- (a) if it is reasonably practicable to do so-before the ship concerned has entered the territorial sea of the Convention State; or
- (b) in any other case-as soon as is reasonably practicable.

(4) If a ship's master delivers a person under subsection (1), he or she must:



(a) make to the authorities of the Convention State such oral or written statements relating to the alleged offence as those authorities may reasonably require; and

(b) deliver to the authorities of the State such other evidence relating to the alleged offence as is in the master's possession.

(5) A ship's master who fails, without reasonable excuse, to comply with subsection (3) or (4) is guilty of an offence.

Penalty: \$2,000.

(6) In this section:

"offence against Division 1" includes an offence arising under section 5 of the Crimes Act 1914 (aiders and abettors) or section 7 of that Act (attempts) in relation to an offence against any of sections 8 to 16.

"ship's master" means the master of an Australian ship.

### PART 3-PROVISIONS RELATING TO THE PROTOCOL

#### *Seizing control of a fixed platform*

21. A person must not, without lawful excuse, take possession of, or take or exercise control over, a fixed platform by the threat or use of force or by any other kind of intimidation.

Penalty: Life imprisonment.

#### *Acts of violence*

22. A person must not perform an act of violence against a person on board a fixed platform knowing that the act is likely to endanger the safety of the platform.

Penalty: 15 years imprisonment.

#### *Destroying or damaging a fixed platform*

23. A person must not, without lawful excuse, destroy a fixed platform or cause damage to a fixed platform knowing that it is likely to endanger its safety.

Penalty: Life imprisonment.

*Placing destructive devices on a fixed platform*

24. A person must not, without lawful excuse, place or cause to be placed on a fixed platform, by any means, a device or substance knowing that it is likely to destroy the fixed platform or endanger its safety.

Penalty: 15 years imprisonment.

*Causing death*

25. A person who kills a person in connection with the commission or attempted commission of an offence against any of sections 21 to 24 is guilty of an offence.

Penalty: Life imprisonment.

*Causing grievous bodily harm*

26. A person who causes grievous bodily harm in connection with the commission or attempted commission of an offence against any of sections 21 to 24 is guilty of an offence.

Penalty: 15 years imprisonment.

*Causing injury to a person*

27. A person who injures a person in connection with the commission or attempted commission of an offence against any of sections 21 to 24 is guilty of an offence.

Penalty: 10 years imprisonment.

*Threatening to endanger a fixed platform*

28. (1) A person must not threaten to do an act that would constitute an offence against section 22 or 23 with intent to compel an individual, a body corporate or a body politic to do or refrain from doing an act, if that threat is likely to endanger the safety of a fixed platform.

Penalty: 2 years imprisonment.

(2) For the purposes of this section, a person is taken to threaten to do an act if the person makes any statement or does anything else indicating, or from which it could reasonably be inferred, that it is his or her intention to do that act.

*Commencement of proceedings*

29. (1) Proceedings must not be commenced against a person for an offence against this Part unless, when the alleged offence was committed:

(a) the platform concerned was beyond the Australian territorial sea; and

(b) the alleged offence had an Australian element or a Protocol State element.

(2) Paragraph (1)(a) does not apply if the person is in Australia only because he or she was extradited to Australia in relation to the acts that constituted the offence.

(3) For the purposes of this section, an offence against this Part had an Australian element if:

(a) the fixed platform concerned was on the Australian continental shelf; or

(b) the alleged offender was a national of Australia.

(4) For the purposes of this section, an offence against this Part had a Protocol State element if one of the following circumstances applied:

(a) the fixed platform concerned was on the continental shelf of a Protocol State;

(b) the fixed platform concerned was in the territorial sea or internal waters of a Protocol State;

(c) the alleged offender was a national of a Protocol State;

(d) the alleged offender was stateless and was habitually resident in a Protocol State that had extended its jurisdiction under Article 3(2)(a) of the Protocol;

(e) during the commission of the alleged offence, a national of a Protocol State was seized, threatened, injured or killed and the Protocol State had extended its jurisdiction under Article 3(2)(b) of the Protocol;

(f) the alleged offence was committed in an attempt to compel a Protocol State to do or abstain from doing any act and the Protocol State had extended its jurisdiction under Article 3(2)(c) of the Protocol.

(5) In this section:

"offence against this Part" includes an offence arising under section 5 of the Crimes Act 1914 (aiders and abettors) or section 7 of that Act (attempts) in relation to an offence against any of sections 21 to 27.

## MISCELLANEOUS

### *Written consent of Attorney-General required*

30. (1) A prosecution for an offence:
- (a) against Division 1 of Part 2 or Part 3; or
  - (b) arising under section 5 or 7 of the Crimes Act 1914 in relation to an offence against any of sections 8 to 16 and sections 21 to 27; may not be begun except with the consent of the Attorney-General or of a person authorised by the Attorney-General to give consent.
- (2) Despite subsection (1):
- (a) a person may be arrested for such an offence, and a warrant for such an arrest may be issued and executed; and
  - (b) a person may be charged with an offence against this Act; and
  - (c) a person so charged may be remanded in custody or on bail;
- but no further step in the proceedings referred to in subsection (1) is to be taken until the Attorney-General's consent has been given.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

### *No prosecution except on indictment*

31. Despite section 4J of the Crimes Act 1914, an offence:
- (a) against Division 1 of Part 2 or Part 3; or
  - (b) arising under section 5 or 7 of the Crimes Act 1914 in relation to an offence against any of sections 8 to 16 and sections 21 to 27; may not be tried except on indictment.

### *Evidence of certain matters*

32. A certificate by the Attorney-General, or a person authorised by the Attorney-General to give such a certificate, stating any of the following:
- (a) that a specified State was, at specified times, a Convention or Protocol State;

(b) the extent to which a specified Convention or Protocol State had, at specified times, extended its jurisdiction under Article 6(2) of the Convention or Article 3(2) of the Protocol;

(c) that specified waters were, at a specified time:

(i) within the internal waters or territorial sea, or above the continental shelf, of Australia or of a specified foreign country; or

(ii) beyond the territorial sea of Australia and of any foreign country;

is, for the purposes of any proceedings under this Act, evidence of the facts stated in the certificate.

#### *Section 38 of the Judiciary Act*

33. A matter arising under this Act, including a question of interpretation of the Convention or Protocol for the purposes of this Act, is, for the purposes of section 38 of the Judiciary Act 1903, taken not to be a matter arising directly under a treaty.

### III. AUSTRIA<sup>9</sup>

#### 1. SUMMARY OF AUSTRIAN LEGISLATION ON TERRORISM<sup>10</sup>

Austrian criminal law does not define terrorism and does not provide for specific provisions relating to terrorism. Terrorist acts are subject to the general provisions of the criminal law. Namely the following provisions of the Strafgesetzbuch (Criminal Code) are of relevance for the prosecution of terrorist acts:

§ 75 - *Murder*: Whoever kills another person is to be punished by imprisonment for 10 to 20 years or for life.

§ 102 *Abduction for extortion*: Whoever abducts another person without his consent or after having obtained his consent by threat or deception with the aim of coercing a third person to act or refrain from acting is to be punished by imprisonment for 10 to 20 years (in qualified cases 10 to 20 years or lifetime imprisonment).

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<sup>9</sup> Transmitted to the Secretariat by that Government on 26 July 1999.

<sup>10</sup> Other relevant provisions are found in the Code of Criminal Procedure (Strafprozessordnung); the Law on Extradition and Mutual Judicial Assistance (Auslieferungsgesetz und Rechtshilfegesetz) and the Security Police Law (Sicherheitspolizeigesetz).