

Texts of National Implementing Legislation (unofficial Translations)

**THE COMMONWEALTH OF AUSTRALIA INTERNATIONAL WAR CRIMES
TRIBUNALS LEGISLATION 1995**

SUMMARY OF LEGISLATION¹

. **Commencement of legislation:** *The International War Crimes Tribunals Act 1995 and the International War Crimes Tribunals (Consequential Amendments) Act 1995* will commence on 28 August 1995. (Proclamation was gazetted in Special Gazette Number 323 of 24 August 1995).

. **Purpose of legislation:** The legislation will enable Australia to comply with binding international obligations imposed by the United Nations Security Council in relation to the two Tribunals set up to deal with war crimes in the Former Yugoslavia and Rwanda.

. **Object of legislation:** It will enable Australia to assist, and comply with requests from the Tribunals. Such requests may involve, among other things, the identification and location of persons, the taking of testimony and the production of evidence, the service of documents, the arrest and detention of persons and the surrender of accused persons to the Tribunals.

. The legislation contains provisions enabling Australia to comply with these international obligations. In particular, the principal Act provides for:

- the arrest and surrender of persons to the Tribunals (Part 3);
- other forms of assistance to the Tribunals, including the taking of evidence and production of documents or other articles; search and seizure; the temporary transfer of persons (by consent) to give evidence at hearings, or assist in investigations, in foreign countries where the Tribunals are sitting; and service of process (Part 4);
- the sitting of the Tribunals in Australia if necessary (Part 5);
- the enforcement of forfeiture orders made by the Tribunals (Part 6); and
- search and seizure and arrest provisions for the purposes of the Act (Part 7).

. It should be noted that the Act does not prevent the provision of assistance to the Tribunals otherwise than under the Act (section 84), ie normal 'police-to-police' assistance not requiring the exercise of compulsory powers.

. The **Consequential Amendments Act** makes amendments to other Acts, including the *Director of Public Prosecutions Act 1983* (to enable the DPP to appear in, and to grant indemnities to persons who are to give evidence for the purpose of proceedings under, the Act); the *Migration Act 1958* (to facilitate the entry into and departure of persons who are required in Australia for purposes connected with the Act); the *Proceeds of Crimes Act 1987* (to enable forfeiture orders registered under the Act to be enforced as if they were forfeiture orders made under the *Proceeds of Crime Act 1987*); and the *Telecommunications (Interception) Act 1979* (to ensure that lawfully intercepted information can be used in certain proceedings under the Act). It should be noted that some minor (section numbering) amendments will be made in the Crimes and Other Legislation Amendment Bill 1995 in relation to the amendments to the migration and proceeds of crime legislation in the *International War Crimes Tribunal (Consequential Amendments) Act 1995*.

. **Regulations** have been made under section 85 of the *International War Crimes Tribunals Act 1995* (Statutory Rules 1995 No. 250). The Regulations, which were **gazetted on 24 August 1995**, provide mechanisms necessary for the practical operation of the Act. They:

- prescribe forms in relation to matters required by the Act to be done in statutory form and in relation to certain applications, authorisations and warrants specified in the Act;
- empower magistrates to issue summonses requiring the attendance of witnesses to give evidence, answer questions and produce documents and articles;
- provide for certain matters in relation to witnesses, such as duty to attend, witness fees and allowances, power to examine on oath or affirmation; and
- provide protections and immunities to magistrates, legal practitioners and witnesses.