

1998-1999-2000-2001

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

**International Criminal Court
(Consequential Amendments) Bill 2001**

No. , 2001

(Attorney-General)

A Bill for an Act to amend the *Criminal Code Act 1995* and certain other Acts in consequence of the enactment of the *International Criminal Court Act 2001*, and for other purposes

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EXPOSURE DRAFT

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A Bill for an Act to amend the *Criminal Code Act 1995* and certain other Acts in consequence of the enactment of the *International Criminal Court Act 2001*, and for other purposes

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The Parliament of Australia enacts:

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1 Short title

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This Act may be cited as the *International Criminal Court (Consequential Amendments) Act 2001*.

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2 Commencement

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(1) Sections 1 to 3 commence on the day on which this Act receives the Royal Assent.

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(2) The Schedules commence on the day on which Parts 2 to 14 of the *International Criminal Court Act 2001* commence.

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Schedule 1—Amendment of the Criminal Code Act 1995

1 The Schedule (at the end of the heading to Chapter 8 of the *Criminal Code*)

Add “and related offences”.

2 The Schedule (before Division 270 of the *Criminal Code*)

Insert:

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

Subdivision A—Introductory

268.1 Purpose

- (1) The purpose of this Division is to create certain offences that are of international concern and certain related offences.
- (2) It is the Parliament’s intention that the jurisdiction of the International Criminal Court is to be complementary to the jurisdiction of Australia with respect to offences in this Division that are also crimes within the jurisdiction of that Court.
- (3) Subdivision B creates offences each of which is called *genocide*.
- (4) Subdivision C creates offences each of which is called a *crime against humanity*.
- (5) Subdivisions D, E, F, G and H create offences each of which is called a *war crime*.
- (6) Subdivision J creates offences each of which is called a *crime against the administration of the justice of the International Criminal Court*.

1 **Subdivision B—Genocide**

2 **268.2 Genocide by killing**

- 3 (1) A person (the *perpetrator*) commits an offence if:
- 4 (a) the perpetrator causes the death of one or more persons; and
- 5 (b) the person or persons belong to a particular national, ethnical,
- 6 racial or religious group; and
- 7 (c) the perpetrator intends to destroy, in whole or in part, that
- 8 national, ethnical, racial or religious group, as such.
- 9 (2) The penalty for an offence against subsection (1) is imprisonment
- 10 for life or for a lesser period.

11 **268.3 Genocide by causing serious bodily or mental harm**

- 12 (1) A person (the *perpetrator*) commits an offence if:
- 13 (a) the perpetrator causes serious bodily or mental harm to one
- 14 or more persons; and
- 15 (b) the person or persons belong to a particular national, ethnical,
- 16 racial or religious group; and
- 17 (c) the perpetrator intends to destroy, in whole or in part, that
- 18 national, ethnical, racial or religious group, as such.
- 19 (2) In subsection (1):
- 20 *causes serious bodily or mental harm* includes, but is not
- 21 restricted to, commits acts of torture, rape, sexual violence or
- 22 inhuman or degrading treatment.
- 23 (3) The penalty for an offence against subsection (1) is imprisonment
- 24 for life or for a lesser period.

25 **268.4 Genocide by deliberately inflicting conditions of life calculated**

26 **to bring about physical destruction**

- 27 (1) A person (the *perpetrator*) commits an offence if:
- 28 (a) the perpetrator inflicts certain conditions of life upon one or
- 29 more persons; and

- 1 (b) the person or persons belong to a particular national, ethnical,
2 racial or religious group; and
3 (c) the perpetrator intends to destroy, in whole or in part, that
4 national, ethnical, racial or religious group, as such; and
5 (d) the conditions of life are calculated to bring about the
6 physical destruction of that group, in whole or in part.

7 (2) In subsection (1):

8 *conditions of life* includes, but is not restricted to, deliberate
9 deprivation of resources indispensable for survival, such as
10 deprivation of food or medical services, or systematic expulsion
11 from homes.

12 (3) The penalty for an offence against subsection (1) is imprisonment
13 for life or for a lesser period.

14 **268.5 Genocide by imposing measures intended to prevent births**

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

- 16 (a) the perpetrator imposes certain measures upon one or more
17 persons; and
18 (b) the person or persons belong to a particular national, ethnical,
19 racial or religious group; and
20 (c) the perpetrator intends to destroy, in whole or in part, that
21 national, ethnical, racial or religious group, as such; and
22 (d) the measures imposed are intended to prevent births within
23 that group.

24 (2) The penalty for an offence against subsection (1) is imprisonment
25 for life or for a lesser period.

26 **268.6 Genocide by forcibly transferring children**

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

- 28 (a) the perpetrator forcibly transfers one or more persons; and
29 (b) the person or persons belong to a particular national, ethnical,
30 racial or religious group; and
31 (c) the perpetrator intends to destroy, in whole or in part, that
32 national, ethnical, racial or religious group, as such; and
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- 1 (d) the transfer is from that group to another national, ethnical,
2 racial or religious group; and
3 (e) the person or persons are under the age of 18 years; and
4 (f) the perpetrator knows, or should know, that the person or
5 persons are under that age.

6 (2) In subsection (1):

7 *forcibly transfers one or more persons* includes transfers one or
8 more persons:

- 9 (a) by threat of force or coercion (such as that caused by fear of
10 violence, duress, detention, psychological oppression or
11 abuse of power) against the person or persons or against
12 another person; or
13 (b) by taking advantage of a coercive environment.

14 (3) The penalty for an offence against subsection (1) is imprisonment
15 for life or for a lesser period.

16 **Subdivision C—Crimes against humanity**

17 **268.7 Crime against humanity—murder**

- 18 (1) A person (the *perpetrator*) commits an offence if:
19 (a) the perpetrator causes the death of one or more persons; and
20 (b) the perpetrator's conduct is committed as part of a
21 widespread or systematic attack directed against a civilian
22 population; and
23 (c) the perpetrator knows that the conduct is part of, or intends
24 the conduct to be part of, such an attack.

25 (2) The penalty for an offence against subsection (1) is imprisonment
26 for life or for a lesser period.

27 **268.8 Crime against humanity—extermination**

- 28 (1) A person (the *perpetrator*) commits an offence if:
29 (a) the perpetrator causes the death of one or more persons; and
30 (b) the perpetrator's conduct constitutes, or takes place as part
31 of, a mass killing of members of a civilian population; and

- 1 (c) the conduct is committed as part of a widespread or
2 systematic attack directed against a civilian population; and
3 (d) the perpetrator knows that the conduct is part of, or intends
4 the conduct to be part of, such an attack.

5 (2) In subsection (1):

6 *causes the death of* includes causes death by intentionally
7 inflicting conditions of life (such as the deprivation of access to
8 food or medicine) calculated to bring about the destruction of part
9 of a population.

10 (3) The penalty for an offence against subsection (1) is imprisonment
11 for life or for a lesser period.

12 **268.9 Crime against humanity—enslavement**

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

- 14 (a) the perpetrator exercises any or all of the powers attaching to
15 the right of ownership over one or more persons (including
16 the exercise of a power in the course of trafficking in
17 persons, in particular women and children); and
18 (b) the perpetrator's conduct is committed as part of a
19 widespread or systematic attack directed against a civilian
20 population; and
21 (c) the perpetrator knows that the conduct is part of, or intends
22 the conduct to be part of, such an attack.

23 (2) In subsection (1):

24 *exercises any or all of the powers attaching to the right of*
25 *ownership* over a person includes purchases, sells, lends or barter
26 a person or imposes on a person a similar deprivation of liberty.

27 (3) The penalty for an offence against subsection (1) is imprisonment
28 for a period not exceeding 25 years.

29 **268.10 Crime against humanity—deportation or forcible transfer of** 30 **population**

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

- 1 (a) the perpetrator forcibly displaces one or more persons, by
2 expulsion or other coercive acts, from an area in which the
3 person or persons are lawfully present to another country or
4 location, without grounds permitted under international law;
5 and
6 (b) the perpetrator is aware of the factual circumstances that
7 establish the lawfulness of the presence of the person or
8 persons in the area; and
9 (c) the perpetrator's conduct is committed as part of a
10 widespread or systematic attack directed against a civilian
11 population; and
12 (d) the perpetrator knows that the conduct is part of, or intends
13 the conduct to be part of, such an attack.

14 (2) In subsection (1):

15 *forcibly displaces one or more persons* includes displaces one or
16 more persons:

- 17 (a) by threat of force or coercion (such as that caused by fear of
18 violence, duress, detention, psychological oppression or
19 abuse of power) against the person or persons or against
20 another person; or
21 (b) by taking advantage of a coercive environment.

22 (3) The penalty for an offence against subsection (1) is imprisonment
23 for a period not exceeding 17 years.

24 **268.11 Crime against humanity—imprisonment or other severe**
25 **deprivation of physical liberty**

- 26 (1) A person (the *perpetrator*) commits an offence if:
27 (a) the perpetrator imprisons one or more persons or otherwise
28 severely deprives one or more persons of physical liberty;
29 and
30 (b) the perpetrator's conduct violates fundamental rules of
31 international law; and
32 (c) the perpetrator's conduct is committed as part of a
33 widespread or systematic attack directed against a civilian
34 population; and

1 (d) the perpetrator knows that the conduct is part of, or intends
2 the conduct to be part of, such an attack.

3 (2) The penalty for an offence against subsection (1) is imprisonment
4 for a period not exceeding 17 years.

5 **268.12 Crime against humanity—torture**

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

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

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

12 (c) the perpetrator's conduct is committed as part of a
13 widespread or systematic attack directed against a civilian
14 population; and

15 (d) the perpetrator knows that the conduct is part of, or intends
16 the conduct to be part of, such an attack.

17 (2) The penalty for an offence against subsection (1) is imprisonment
18 for a period not exceeding 25 years.

19 **268.13 Crime against humanity—rape**

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

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

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

25 (c) the perpetrator's conduct is committed as part of a
26 widespread or systematic attack directed against a civilian
27 population; and

28 (d) the perpetrator knows that the conduct is part of, or intends
29 the conduct to be part of, such an attack.

30 (2) In this section:

31 *sexually penetrate* means:

- 1 (a) penetrate (to any extent) the genitalia or anus of a person by
2 any part of the body of another person or by any object
3 manipulated by that other person; or
4 (b) penetrate (to any extent) the mouth of a person by the penis
5 of another person; or
6 (c) continue to sexually penetrate as defined in paragraph (a) or
7 (b).

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

11 (4) In this section, the genitalia or other parts of the body of a person
12 include surgically constructed genitalia or other parts of the body
13 of the person.

14 (5) The penalty for an offence against subsection (1) is imprisonment
15 for a period not exceeding 25 years.

16 **268.14 Crime against humanity—sexual slavery**

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

- 18 (a) the perpetrator's conduct causes another person to enter into
19 or remain in sexual slavery; and
20 (b) the perpetrator intends to cause, or is reckless as to causing,
21 that sexual slavery; and
22 (c) the conduct is committed as part of a widespread or
23 systematic attack directed against a civilian population; and
24 (d) the perpetrator knows that the conduct is part of, or intends
25 the conduct to be part of, such an attack.

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

- 29 (a) is not free to cease providing sexual services; or
30 (b) is not free to leave the place or area where the person
31 provides sexual services.

32 (3) In this section:

1 **sexual service** means the commercial use or display of the body of
2 the person providing the service for the sexual gratification of
3 others.

4 **threat** means:

- 5 (a) a threat of force; or
- 6 (b) a threat to cause a person's deportation; or
- 7 (c) a threat of any other detrimental action unless there are
8 reasonable grounds for the threat of that action in connection
9 with the provision of sexual services by a person.

10 (4) The penalty for an offence against subsection (1) is imprisonment
11 for a period not exceeding 25 years.

12 **268.15 Crime against humanity—enforced prostitution**

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

- 14 (a) the perpetrator causes one or more persons to engage in one
15 or more acts of a sexual nature:
 - 16 (i) by force, or by threat of force or coercion, against the
17 person or persons or against another person; or
 - 18 (ii) by taking advantage of the incapacity of the person or
19 persons to give consent; and
- 20 (b) the perpetrator or another person obtains or expects to obtain
21 pecuniary or other advantage in exchange for, or in
22 connection with, the acts of a sexual nature; and
- 23 (c) the perpetrator's conduct is committed as part of a
24 widespread or systematic attack directed against a civilian
25 population; and
- 26 (d) the perpetrator knows that the conduct is part of, or intends
27 the conduct to be part of, such an attack.

28 (2) In subsection (1):

29 **consent** does not include consent affected by deception or by
30 natural, induced or age-related incapacity.

31 **threat of force or coercion** includes:

- 1 (a) a threat of force or coercion such as that caused by fear of
2 violence, duress, detention, psychological oppression or
3 abuse of power; or
4 (b) taking advantage of a coercive environment.
- 5 (3) The penalty for an offence against subsection (1) is imprisonment
6 for a period not exceeding 25 years.

7 **268.16 Crime against humanity—forced pregnancy**

- 8 (1) A person (the *perpetrator*) commits an offence if:
9 (a) the perpetrator unlawfully confines one or more women
10 forcibly made pregnant, with the intent of affecting the ethnic
11 composition of any population or carrying out other grave
12 violations of international law; and
13 (b) the perpetrator's conduct is committed as part of a
14 widespread or systematic attack directed against a civilian
15 population; and
16 (c) the perpetrator knows that the conduct is part of, or intends
17 the conduct to be part of, such an attack.
- 18 (2) In subsection (1):
19 *forcibly made pregnant* includes made pregnant by a consent that
20 was affected by deception or by natural, induced or age-related
21 incapacity.
- 22 (3) The penalty for an offence against subsection (1) is imprisonment
23 for a period not exceeding 25 years.
- 24 (4) To avoid doubt, this section does not affect any other law of the
25 Commonwealth or any law of a State or Territory.

26 **268.17 Crime against humanity—enforced sterilisation**

- 27 (1) A person (the *perpetrator*) commits an offence if:
28 (a) the perpetrator deprives one or more persons of biological
29 reproductive capacity; and
30 (b) the deprivation is not effected by a birth-control measure that
31 has a non-permanent effect in practice; and

- 1 (c) the perpetrator's conduct is neither justified by the medical or
2 hospital treatment of the person or persons nor carried out
3 with the consent of the person or persons; and
4 (d) the conduct is committed as part of a widespread or
5 systematic attack directed against a civilian population; and
6 (e) the perpetrator knows that the conduct is part of, or intends
7 the conduct to be part of, such an attack.

8 (2) In subsection (1):

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

11 (3) The penalty for an offence against subsection (1) is imprisonment
12 for a period not exceeding 25 years.

13 **268.18 Crime against humanity—sexual violence**

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

15 (a) the perpetrator does either of the following:

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

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

20 by force, or by threat of force or coercion, against the person
21 or persons or against another person or by taking advantage
22 of the incapacity of the person or persons to give consent;
23 and

24 (b) the perpetrator's conduct is of a gravity comparable to the
25 offences referred to in sections 268.13 to 268.17; and

26 (c) the conduct is committed as part of a widespread or
27 systematic attack directed against a civilian population; and

28 (d) the perpetrator knows that the conduct is part of, or intends
29 the conduct to be part of, such an attack.

30 (2) In subsection (1):

31 **consent** does not include consent affected by deception or by
32 natural, induced or age-related incapacity.

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threat of force or coercion includes:

- (a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
 - (b) taking advantage of a coercive environment.
- (3) The penalty for an offence against subsection (1) is imprisonment for a period not exceeding 25 years.

268.19 Crime against humanity—persecution

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator severely deprives, contrary to international law, one or more persons of fundamental rights; and
 - (b) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and
 - (c) the targeting is based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law; and
 - (d) the perpetrator’s conduct is committed in connection with another act that is:
 - (i) a proscribed inhumane act; or
 - (ii) genocide; or
 - (iii) a war crime; and
 - (e) the conduct is committed as part of a widespread or systematic attack directed against a civilian population; and
 - (f) the perpetrator knows that the conduct is part of, or intends the conduct to be part of, such an attack.
- (2) The penalty for an offence against subsection (1) is imprisonment for a period not exceeding 17 years.

268.20 Crime against humanity—enforced disappearance of persons

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator arrests, detains or abducts one or more persons; and

- 1 (b) the arrest, detention or abduction is carried out by, or with
2 the authorisation, support or acquiescence of, the government
3 of a country or a political organisation; and
4 (c) the perpetrator intends to remove the person or persons from
5 the protection of the law for a prolonged period of time; and
6 (d) the perpetrator's conduct is committed as part of a
7 widespread or systematic attack directed against a civilian
8 population; and
9 (e) the perpetrator knows that the conduct is part of, or intends
10 the conduct to be part of, such an attack; and
11 (f) after the arrest, detention or abduction, the government or
12 organisation refuses to acknowledge the deprivation of
13 freedom of, or to give information on the fate or whereabouts
14 of, the person or persons.
- 15 (2) A person (the *perpetrator*) commits an offence if:
16 (a) one or more persons have been arrested, detained or
17 abducted; and
18 (b) the arrest, detention or abduction was carried out by, or with
19 the authorisation, support or acquiescence of, the government
20 of a country or a political organisation; and
21 (c) the perpetrator refuses to acknowledge the deprivation of
22 freedom, or to give information on the fate or whereabouts,
23 of the person or persons; and
24 (d) the refusal occurs with the authorisation, support or
25 acquiescence of the government of the country or the
26 political organisation; and
27 (e) the perpetrator is aware that the refusal was preceded or
28 accompanied by the deprivation of freedom; and
29 (f) the perpetrator intends that the person or persons be removed
30 from the protection of the law for a prolonged period of time;
31 and
32 (g) the arrest, detention or abduction occurred, and the refusal
33 occurs, as part of a widespread or systematic attack directed
34 against a civilian population; and
35 (h) the perpetrator knows that the refusal is part of, or intends the
36 refusal to be part of, such an attack.

- 1 (3) The penalty for an offence against subsection (1) or (2) is
2 imprisonment for a period not exceeding 17 years.

3 **268.21 Crime against humanity—apartheid**

- 4 (1) A person (the *perpetrator*) commits an offence if:
5 (a) the perpetrator commits against one or more persons an
6 inhumane act that is a proscribed inhumane act or is of a
7 nature and gravity similar to any proscribed inhumane act;
8 and
9 (b) the perpetrator's conduct is committed in the context of an
10 institutionalised regime of systematic oppression and
11 domination by one racial group over any other racial group or
12 groups; and
13 (c) the perpetrator is aware of the factual circumstances that
14 establish the character of the act; and
15 (d) the perpetrator intends to maintain the regime by the conduct;
16 and
17 (e) the conduct is committed as part of a widespread or
18 systematic attack directed against a civilian population; and
19 (f) the perpetrator knows that the conduct is part of, or intends
20 the conduct to be part of, such an attack.
21 (2) The penalty for an offence against subsection (1) is imprisonment
22 for a period not exceeding 17 years.

23 **268.22 Crime against humanity—other inhumane act**

- 24 (1) A person (the *perpetrator*) commits an offence if:
25 (a) the perpetrator causes great suffering, or serious injury to
26 body or to mental or physical health, by means of an
27 inhumane act; and
28 (b) the act is of a character similar to another proscribed
29 inhumane act; and
30 (c) the perpetrator's conduct is committed as part of a
31 widespread or systematic attack directed against a civilian
32 population; and
33 (d) the perpetrator knows that the conduct is part of, or intends
34 the conduct to be part of, such an attack.
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- 1 (2) The penalty for an offence against subsection (1) is imprisonment
2 for a period not exceeding 17 years.

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

6 **268.23 War crime—wilful killing**

- 7 (1) A person (the *perpetrator*) commits an offence if:
8 (a) the perpetrator causes the death of one or more persons; and
9 (b) the person or persons are protected under one or more of the
10 Geneva Conventions or under Protocol I to the Geneva
11 Conventions; and
12 (c) the perpetrator is aware of the factual circumstances that
13 establish that the person or persons are so protected; and
14 (d) the perpetrator’s conduct takes place in the context of, and is
15 associated with, an international armed conflict.
- 16 (2) The penalty for an offence against subsection (1) is imprisonment
17 for life or for a lesser period.

18 **268.24 War crime—torture**

- 19 (1) A person (the *perpetrator*) commits an offence if:
20 (a) the perpetrator inflicts severe physical or mental pain or
21 suffering upon one or more persons; and
22 (b) the perpetrator inflicts the pain or suffering for such purposes
23 as:
24 (i) obtaining information or a confession; or
25 (ii) a punishment, intimidation or coercion; or
26 (iii) a reason based on discrimination of any kind; and
27 (c) the person or persons are protected under one or more of the
28 Geneva Conventions or under Protocol I to the Geneva
29 Conventions; and
30 (d) the perpetrator is aware of the factual circumstances that
31 establish that the person or persons are so protected; and

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

3 (2) The penalty for an offence against subsection (1) is imprisonment
4 for a period not exceeding 25 years.

5 **268.25 War crime—inhumane treatment**

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

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

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

12 (c) the perpetrator is aware of the factual circumstances that
13 establish that the person or persons are so protected; and

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

16 (2) The penalty for an offence against subsection (1) is imprisonment
17 for a period not exceeding 25 years.

18 **268.26 War crime—biological experiments**

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

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

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

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

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

31 (e) the perpetrator is aware of the factual circumstances that
32 establish that the person or persons are so protected; and

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

3 (2) The penalty for an offence against subsection (1) is imprisonment
4 for a period not exceeding 25 years.

5 **268.27 War crime—wilfully causing great suffering**

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

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

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

13 (c) the perpetrator is aware of the factual circumstances that
14 establish that the person or persons are so protected; and

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

17 (2) The penalty for an offence against subsection (1) is imprisonment
18 for a period not exceeding 17 years.

19 **268.28 War crime—destruction and appropriation of property**

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

21 (a) the perpetrator destroys or appropriates certain property; and

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

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

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

29 (e) the perpetrator is aware of the factual circumstances that
30 establish that the property is so protected; and

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

- 1 (2) The penalty for an offence against subsection (1) is imprisonment
2 for a period not exceeding 15 years.

3 **268.29 War crime—compelling service in hostile forces**

- 4 (1) A person (the *perpetrator*) commits an offence if:
5 (a) the perpetrator coerces one or more persons, by act or threat:
6 (i) to take part in military operations against that person's
7 or those persons' own country or forces; or
8 (ii) otherwise to serve in the forces of a hostile power; and
9 (b) the person or persons are protected under one or more of the
10 Geneva Conventions or under Protocol I to the Geneva
11 Conventions; and
12 (c) the perpetrator is aware of the factual circumstances that
13 establish that the person or persons are so protected; and
14 (d) the perpetrator's conduct takes place in the context of, and is
15 associated with, an international armed conflict.

- 16 (2) The penalty for an offence against subsection (1) is imprisonment
17 for a period not exceeding 10 years.

18 **268.30 War crime—denying a fair trial**

- 19 (1) A person (the *perpetrator*) commits an offence if:
20 (a) the perpetrator deprives one or more persons of a fair and
21 regular trial by denying judicial guarantees as defined, in
22 particular, in the Third Geneva Convention and the Fourth
23 Geneva Convention; and
24 (b) the person or persons are protected under one or more of the
25 Geneva Conventions or under Protocol I to the Geneva
26 Conventions; and
27 (c) the perpetrator is aware of the factual circumstances that
28 establish that the person or persons are so protected; and
29 (d) the perpetrator's conduct takes place in the context of, and is
30 associated with, an international armed conflict.

- 31 (2) The penalty for an offence against subsection (1) is imprisonment
32 for a period not exceeding 10 years.

1 **268.31 War crime—unlawful deportation or transfer**

- 2 (1) A person (the *perpetrator*) commits an offence if:
- 3 (a) the perpetrator unlawfully departs or transfers one or more
- 4 persons to another country or to another location; and
- 5 (b) the person or persons are protected under one or more of the
- 6 Geneva Conventions or under Protocol I to the Geneva
- 7 Conventions; and
- 8 (c) the perpetrator is aware of the factual circumstances that
- 9 establish that the person or persons are so protected; and
- 10 (d) the perpetrator's conduct takes place in the context of, and is
- 11 associated with, an international armed conflict.
- 12 (2) The penalty for an offence against subsection (1) is imprisonment
- 13 for a period not exceeding 17 years.

14 **268.32 War crime—unlawful confinement**

- 15 (1) A person (the *perpetrator*) commits an offence if:
- 16 (a) the perpetrator unlawfully confines or continues to confine
- 17 one or more persons to a certain location; and
- 18 (b) the person or persons are protected under one or more of the
- 19 Geneva Conventions or under Protocol I to the Geneva
- 20 Conventions; and
- 21 (c) the perpetrator is aware of the factual circumstances that
- 22 establish that the person or persons are so protected; and
- 23 (d) the perpetrator's conduct takes place in the context of, and is
- 24 associated with, an international armed conflict.
- 25 (2) The penalty for an offence against subsection (1) is imprisonment
- 26 for a period not exceeding 17 years.

27 **268.33 War crime—taking hostages**

- 28 (1) A person (the *perpetrator*) commits an offence if:
- 29 (a) the perpetrator seizes, detains or otherwise holds hostage one
- 30 or more persons; and
- 31 (b) the perpetrator threatens to kill, injure or continue to detain
- 32 the person or persons; and

- 1 (c) the perpetrator intends to compel the government of a
2 country, an international organisation or a person or group of
3 persons to act or refrain from acting as an explicit or implicit
4 condition for the safety or the release of the person or
5 persons; and
6 (d) the person or persons are protected under one or more of the
7 Geneva Conventions or under Protocol I to the Geneva
8 Conventions; and
9 (e) the perpetrator is aware of the factual circumstances that
10 establish that the person or persons are so protected; and
11 (f) the perpetrator's conduct takes place in the context of, and is
12 associated with, an international armed conflict.
- 13 (2) The penalty for an offence against subsection (1) is imprisonment
14 for a period not exceeding 17 years.

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

17 **268.34 War crime—attacking civilians**

- 18 (1) A person (the *perpetrator*) commits an offence if:
19 (a) the perpetrator directs an attack; and
20 (b) the object of the attack is a civilian population as such or
21 individual civilians not taking direct part in hostilities; and
22 (c) the perpetrator's conduct takes place in the context of, and is
23 associated with, an international armed conflict.
- 24 (2) The penalty for an offence against subsection (1) is imprisonment
25 for life or for a lesser period.

26 **268.35 War crime—attacking civilian objects**

- 27 (1) A person (the *perpetrator*) commits an offence if:
28 (a) the perpetrator directs an attack; and
29 (b) the object of the attack is objects that are not military
30 objectives; and
31 (c) the perpetrator's conduct takes place in the context of, and is
32 associated with, an international armed conflict.

1 (2) The penalty for an offence against subsection (1) is imprisonment
2 for a period not exceeding 15 years.

3 **268.36 War crime—attacking personnel or objects involved in a**
4 **humanitarian assistance or peacekeeping mission**

- 5 (1) A person (the *perpetrator*) commits an offence if:
- 6 (a) the perpetrator directs an attack; and
 - 7 (b) the object of the attack is personnel, installations, material,
8 units or vehicles involved in a humanitarian assistance or
9 peacekeeping mission in accordance with the Charter of the
10 United Nations; and
 - 11 (c) the personnel, installations, material, units or vehicles are
12 entitled to the protection given to civilians or civilian objects
13 under the international law of armed conflict; and
 - 14 (d) the perpetrator is aware of the factual circumstances that
15 establish that protection; and
 - 16 (e) the perpetrator's conduct takes place in the context of, and is
17 associated with, an international armed conflict.
- 18 (2) The penalty for an offence against subsection (1) is imprisonment
19 for life or for a lesser period.

20 **268.37 War crime—excessive incidental death, injury or damage**

- 21 (1) A person (the *perpetrator*) commits an offence if:
- 22 (a) the perpetrator launches an attack; and
 - 23 (b) the attack is such that it will cause:
 - 24 (i) incidental death or injury to civilians; or
 - 25 (ii) damage to civilian objects; or
 - 26 (iii) widespread, long-term and severe damage to the natural
27 environment; and
 - 28 (c) the attack is such that the death, injury or damage will be of
29 such an extent as to be clearly excessive in relation to the
30 concrete and direct overall military advantage anticipated;
31 and
 - 32 (d) the perpetrator knows that the attack will cause:
 - 33 (i) incidental death or injury to civilians; or

- 1 (ii) damage to civilian objects; or
2 (iii) widespread, long-term and severe damage to the natural
3 environment; and
4 (e) the perpetrator knows that the death, injury or damage will be
5 of such an extent as to be clearly excessive in relation to the
6 concrete and direct overall military advantage anticipated;
7 and
8 (f) the perpetrator's conduct takes place in the context of, and is
9 associated with, an international armed conflict.
- 10 (2) The penalty for an offence against subsection (1) is imprisonment
11 for life or for a lesser period.

12 **268.38 War crime—attacking undefended places**

- 13 (1) A person (the *perpetrator*) commits an offence if:
14 (a) the perpetrator attacks or bombards one or more towns,
15 villages, dwellings or buildings; and
16 (b) the towns, villages, dwellings or buildings are open for
17 unresisted occupation; and
18 (c) the towns, villages, dwellings or buildings do not constitute
19 military objectives; and
20 (d) the perpetrator's conduct takes place in the context of, and is
21 associated with, an international armed conflict.
- 22 (2) The penalty for an offence against subsection (1) is imprisonment
23 for life or for a lesser period.

24 **268.39 War crime—killing or wounding a person who is *hors de***
25 ***combat***

- 26 (1) A person (the *perpetrator*) commits an offence if:
27 (a) the perpetrator kills or injures one or more persons; and
28 (b) the person or persons are *hors de combat*; and
29 (c) the perpetrator is aware of the factual circumstances that
30 establish that the person or persons are *hors de combat*; and
31 (d) the perpetrator's conduct takes place in the context of, and is
32 associated with, an international armed conflict.

- 1 (2) The penalty for an offence against subsection (1) is imprisonment
2 for life or for a lesser period.

3 **268.40 War crime—improper use of a flag of truce**

- 4 (1) A person (the *perpetrator*) commits an offence if:
5 (a) the perpetrator uses a flag of truce; and
6 (b) the perpetrator uses the flag in order to feign an intention to
7 negotiate when there is no such intention on the part of the
8 perpetrator; and
9 (c) the perpetrator knows or should know of the illegal nature of
10 such use of the flag; and
11 (d) the perpetrator's conduct results in death or serious personal
12 injury; and
13 (e) the conduct takes place in the context of, and is associated
14 with, an international armed conflict.
- 15 (2) The penalty for an offence against subsection (1) is imprisonment
16 for a period not exceeding 25 years.

17 **268.41 War crime—improper use of a flag, insignia or uniform of**
18 **the hostile party**

- 19 (1) A person (the *perpetrator*) commits an offence if:
20 (a) the perpetrator uses a flag, insignia or uniform of the hostile
21 party; and
22 (b) the perpetrator uses the flag, insignia or uniform in a manner
23 prohibited under the international law of armed conflict while
24 engaged in an attack; and
25 (c) the perpetrator knows of the illegal nature of such use of the
26 flag, insignia or uniform; and
27 (d) the perpetrator's conduct results in death or serious personal
28 injury; and
29 (e) the conduct takes place in the context of, and is associated
30 with, an international armed conflict.
- 31 (2) The penalty for an offence against subsection (1) is imprisonment
32 for a period not exceeding 25 years.

1 **268.42 War crime—improper use of a flag, insignia or uniform of**
2 **the United Nations**

- 3 (1) A person (the *perpetrator*) commits an offence if:
- 4 (a) the perpetrator uses a flag, insignia or uniform of the United
5 Nations; and
 - 6 (b) the perpetrator uses the flag, insignia or uniform in a manner
7 prohibited under the international law of armed conflict; and
 - 8 (c) the perpetrator knows of the illegal nature of such use of the
9 flag, insignia or uniform; and
 - 10 (d) the perpetrator's conduct results in death or serious personal
11 injury; and
 - 12 (e) the conduct takes place in the context of, and is associated
13 with, an international armed conflict.
- 14 (2) The penalty for an offence against subsection (1) is imprisonment
15 for a period not exceeding 25 years.

16 **268.43 War crime—improper use of the distinctive emblems of the**
17 **Geneva Conventions**

- 18 (1) A person (the *perpetrator*) commits an offence if:
- 19 (a) the perpetrator uses any of the distinctive emblems of the
20 Geneva Conventions; and
 - 21 (b) the perpetrator uses the emblems for combatant purposes in a
22 manner prohibited under the international law of armed
23 conflict; and
 - 24 (c) the perpetrator knows or should know of the illegal nature of
25 such use; and
 - 26 (d) the perpetrator's conduct results in death or serious personal
27 injury; and
 - 28 (e) the conduct takes place in the context of, and is associated
29 with, an international armed conflict.
- 30 (2) The penalty for an offence against subsection (1) is imprisonment
31 for a period not exceeding 25 years.

1 **268.44 War crime—transfer of population**

- 2 (1) A person (the *perpetrator*) commits an offence if:
- 3 (a) the perpetrator:
- 4 (i) authorises, organises or directs, or participates in the
- 5 authorisation, organisation or direction of, or
- 6 participates in, the transfer, directly or indirectly, of
- 7 parts of the civilian population of the perpetrator's own
- 8 country into territory that the country occupies; or
- 9 (ii) authorises, organises or directs, or participates in the
- 10 authorisation, organisation or direction of, or
- 11 participates in, the deportation or transfer of all or parts
- 12 of the population of territory occupied by the
- 13 perpetrator's own country within or outside that
- 14 territory; and
- 15 (b) the perpetrator's conduct takes place in the context of, and is
- 16 associated with, an international armed conflict.
- 17 (2) The penalty for an offence against subsection (1) is imprisonment
- 18 for a period not exceeding 17 years.

19 **268.45 War crime—attacking protected objects**

- 20 (1) A person (the *perpetrator*) commits an offence if:
- 21 (a) the perpetrator directs an attack; and
- 22 (b) the object of the attack is any one or more of the following
- 23 that are not military objectives:
- 24 (i) buildings dedicated to religion, education, art, science or
- 25 charitable purposes;
- 26 (ii) historic monuments;
- 27 (iii) hospitals or places where the sick and wounded are
- 28 collected; and
- 29 (c) the perpetrator's conduct takes place in the context of, and is
- 30 associated with, an international armed conflict.
- 31 (2) The penalty for an offence against subsection (1) is imprisonment
- 32 for a period not exceeding 17 years.

1 **268.46 War crime—mutilation**

- 2 (1) A person (the *perpetrator*) commits an offence if:
- 3 (a) the perpetrator subjects one or more persons to mutilation,
4 such as by permanently disfiguring, or permanently disabling
5 or removing organs or appendages of, the person or persons;
6 and
- 7 (b) the perpetrator's conduct causes the death, or seriously
8 endangers the health, of the person or persons; and
- 9 (c) the conduct is neither justified by the medical, dental or
10 hospital treatment of the person or persons nor carried out in
11 the interest or interests of the person or persons; and
- 12 (d) the person or persons are in the power of an adverse party;
13 and
- 14 (e) the conduct takes place in the context of, and is associated
15 with, an international armed conflict.
- 16 (2) The penalty for an offence against subsection (1) is imprisonment
17 for life or for a lesser period.

18 **268.47 War crime—medical or scientific experiments**

- 19 (1) A person (the *perpetrator*) commits an offence if:
- 20 (a) the perpetrator subjects one or more persons to a medical or
21 scientific experiment; and
- 22 (b) the experiment causes the death, or seriously endangers the
23 health, of the person or persons; and
- 24 (c) the perpetrator's conduct is neither justified by the medical,
25 dental or hospital treatment of the person or persons nor
26 carried out in the interest or interests of the person or
27 persons; and
- 28 (d) the person or persons are in the power of an adverse party;
29 and
- 30 (e) the conduct takes place in the context of, and is associated
31 with, an international armed conflict.
- 32 (2) The penalty for an offence against subsection (1) is imprisonment
33 for life or for a lesser period.

1 **268.48 War crime—treacherously killing or wounding**

- 2 (1) A person (the *perpetrator*) commits an offence if:
- 3 (a) the perpetrator invites the confidence or belief of one or more
- 4 persons that they are entitled to, or are obliged to accord,
- 5 protection under rules of international law applicable in
- 6 armed conflict; and
- 7 (b) the perpetrator kills or injures the person or persons; and
- 8 (c) the perpetrator makes use of that confidence or belief in
- 9 killing or injuring the person or persons; and
- 10 (d) the person or persons belong to an adverse party; and
- 11 (e) the perpetrator's conduct takes place in the context of, and is
- 12 associated with, an international armed conflict.
- 13 (2) The penalty for an offence against subsection (1) is imprisonment
- 14 for life or for a lesser period.

15 **268.49 War crime—denying quarter**

- 16 (1) A person (the *perpetrator*) commits an offence if:
- 17 (a) the perpetrator declares or orders that there are to be no
- 18 survivors; and
- 19 (b) the declaration or order is given in order to threaten an
- 20 adversary or to conduct hostilities on the basis that there are
- 21 to be no survivors; and
- 22 (c) the perpetrator is in a position of effective command or
- 23 control over the subordinate forces to which the declaration
- 24 or order is directed; and
- 25 (d) the perpetrator's conduct takes place in the context of, and is
- 26 associated with, an international armed conflict.
- 27 (2) The penalty for an offence against subsection (1) is imprisonment
- 28 for life or for a lesser period.

29 **268.50 War crime—destroying or seizing the enemy's property**

- 30 (1) A person (the *perpetrator*) commits an offence if:
- 31 (a) the perpetrator destroys or seizes certain property; and
- 32 (b) the property is property of a hostile party; and

- 1 (c) the property is protected from the destruction or seizure
2 under the international law of armed conflict; and
3 (d) the perpetrator is aware of the factual circumstances that
4 establish that the property is so protected; and
5 (e) the destruction or seizure is not justified by military
6 necessity; and
7 (f) the perpetrator's conduct takes place in the context of, and is
8 associated with, an international armed conflict.
- 9 (2) The penalty for an offence against subsection (1) is imprisonment
10 for a period not exceeding 15 years.

11 **268.51 War crime—depriving nationals of the hostile power of**
12 **rights or actions**

- 13 (1) A person (the *perpetrator*) commits an offence if:
14 (a) the perpetrator effects the abolition, suspension or
15 termination of admissibility in a court of law of certain rights
16 or actions; and
17 (b) the abolition, suspension or termination is directed at the
18 nationals of a hostile party; and
19 (c) the perpetrator's conduct takes place in the context of, and is
20 associated with, an international armed conflict.
- 21 (2) The penalty for an offence against subsection (1) is imprisonment
22 for a period not exceeding 10 years.

23 **268.52 War crime—compelling participation in military operations**

- 24 (1) A person (the *perpetrator*) commits an offence if:
25 (a) the perpetrator coerces one or more persons by act or threat
26 to take part in military operations against that person's or
27 those persons' own country or forces; and
28 (b) the person or persons are nationals of a hostile party; and
29 (c) the perpetrator's conduct takes place in the context of, and is
30 associated with, an international armed conflict.
- 31 (2) It is not a defence to a prosecution for an offence against
32 subsection (1) that the person or persons were in the service of the

1 perpetrator at a time before the beginning of the international
2 armed conflict.

3 (3) The penalty for an offence against subsection (1) is imprisonment
4 for a period not exceeding 10 years.

5 **268.53 War crime—pillaging**

6 (1) A person (the *perpetrator*) commits an offence if:
7 (a) the perpetrator appropriates certain property; and
8 (b) the perpetrator intends to deprive the owner of the property
9 and to appropriate it for private or personal use; and
10 (c) the appropriation is without the consent of the owner; and
11 (d) the perpetrator’s conduct takes place in the context of, and is
12 associated with, an international armed conflict.

13 (2) The penalty for an offence against subsection (1) is imprisonment
14 for a period not exceeding 15 years.

15 **268.54 War crime—employing poison or poisoned weapons**

16 (1) A person (the *perpetrator*) commits an offence if:
17 (a) the perpetrator employs a substance or employs a weapon
18 that releases a substance as a result of its employment; and
19 (b) the substance is such that it causes death or serious damage
20 to health in the ordinary course of events through its toxic
21 properties; and
22 (c) the perpetrator’s conduct takes place in the context of, and is
23 associated with, an international armed conflict.

24 (2) The penalty for an offence against subsection (1) is imprisonment
25 for a period not exceeding 25 years.

26 **268.55 War crime—employing prohibited gases, liquids, materials
27 or devices**

28 (1) A person (the *perpetrator*) commits an offence if:
29 (a) the perpetrator employs a gas or other analogous substance or
30 device; and

- 1 (b) the gas, substance or device is such that it causes death or
2 serious damage to health in the ordinary course of events
3 through its asphyxiating or toxic properties; and
4 (c) the perpetrator's conduct takes place in the context of, and is
5 associated with, an international armed conflict.
- 6 (2) The penalty for an offence against subsection (1) is imprisonment
7 for a period not exceeding 25 years.

8 **268.56 War crime—employing prohibited bullets**

- 9 (1) A person (the *perpetrator*) commits an offence if:
10 (a) the perpetrator employs certain bullets; and
11 (b) the bullets are such that their use violates the international
12 law of armed conflict because they expand or flatten easily in
13 the human body; and
14 (c) the perpetrator is aware that the nature of the bullets is such
15 that their employment will uselessly aggravate suffering or
16 the wounding effect; and
17 (d) the perpetrator's conduct takes place in the context of, and is
18 associated with, an international armed conflict.
- 19 (2) The penalty for an offence against subsection (1) is imprisonment
20 for a period not exceeding 25 years.

21 **268.57 War crime—outrages upon personal dignity**

- 22 (1) A person (the *perpetrator*) commits an offence if:
23 (a) the perpetrator humiliates, degrades or otherwise violates the
24 dignity of one or more persons or the dignity of the body or
25 bodies of one or more dead persons; and
26 (b) the severity of the humiliation, degradation or other violation
27 is of such degree as to be generally recognised as an outrage
28 upon personal dignity; and
29 (c) the perpetrator's conduct takes place in the context of, and is
30 associated with, an international armed conflict.
- 31 (2) The penalty for an offence against subsection (1) is imprisonment
32 for a period not exceeding 10 years.

1 **268.58 War crime—rape**

- 2 (1) A person (the *perpetrator*) commits an offence if:
- 3 (a) the perpetrator sexually penetrates another person without the
4 consent of that person; and
- 5 (b) the perpetrator knows about, or is reckless as to, the lack of
6 consent; and
- 7 (c) the perpetrator's conduct takes place in the context of, and is
8 associated with, an international armed conflict.
- 9 (2) In this section:
- 10 *sexually penetrate* means:
- 11 (a) penetrate (to any extent) the genitalia or anus of a person by
12 any part of the body of another person or by any object
13 manipulated by that other person; or
- 14 (b) penetrate (to any extent) the mouth of a person by the penis
15 of another person; or
- 16 (c) continue to sexually penetrate as defined in paragraph (a) or
17 (b).
- 18 (3) In this section, being *reckless* as to a lack of consent to sexual
19 penetration includes not giving any thought to whether or not the
20 person is consenting to sexual penetration.
- 21 (4) In this section, the genitalia or other parts of the body of a person
22 include surgically constructed genitalia or other parts of the body
23 of the person.
- 24 (5) The penalty for an offence against subsection (1) is imprisonment
25 for a period not exceeding 25 years.

26 **268.59 War crime—sexual slavery**

- 27 (1) A person (the *perpetrator*) commits an offence if:
- 28 (a) the perpetrator's conduct causes another person to enter into
29 or remain in sexual slavery; and
- 30 (b) the perpetrator intends to cause, or is reckless as to causing,
31 that sexual slavery; and

- 1 (c) the perpetrator's conduct takes place in the context of, and is
2 associated with, an international armed conflict.
- 3 (2) For the purposes of this section, *sexual slavery* is the condition of a
4 person who provides sexual services and who, because of the use
5 of force or threats:
6 (a) is not free to cease providing sexual services; or
7 (b) is not free to leave the place or area where the person
8 provides sexual services.
- 9 (3) In this section:
10 *sexual service* means the commercial use or display of the body of
11 the person providing the service for the sexual gratification of
12 others.
13 *threat* means:
14 (a) a threat of force; or
15 (b) a threat to cause a person's deportation; or
16 (c) a threat of any other detrimental action unless there are
17 reasonable grounds for the threat of that action in connection
18 with the provision of sexual services by a person.
- 19 (4) The penalty for an offence against subsection (1) is imprisonment
20 for a period not exceeding 25 years.

21 **268.60 War crime—enforced prostitution**

- 22 (1) A person (the *perpetrator*) commits an offence if:
23 (a) the perpetrator causes one or more persons to engage in one
24 or more acts of a sexual nature:
25 (i) by force, or by threat of force or coercion, against the
26 person or persons or against another person; or
27 (ii) by taking advantage of the incapacity of the person or
28 persons to give consent; and
29 (b) the perpetrator or another person obtains or expects to obtain
30 pecuniary or other advantage in exchange for, or in
31 connection with, the acts of a sexual nature; and
32 (c) the perpetrator's conduct takes place in the context of, and is
33 associated with, an international armed conflict.
-

- 1 (2) In subsection (1):
- 2 *consent* does not include consent affected by deception or by
- 3 natural, induced or age-related incapacity.
- 4 *threat of force or coercion* includes:
- 5 (a) a threat of force or coercion such as that caused by fear of
- 6 violence, duress, detention, psychological oppression or
- 7 abuse of power; or
- 8 (b) taking advantage of a coercive environment.
- 9 (3) The penalty for an offence against subsection (1) is imprisonment
- 10 for a period not exceeding 25 years.

11 **268.61 War crime—forced pregnancy**

- 12 (1) A person (the *perpetrator*) commits an offence if:
- 13 (a) the perpetrator unlawfully confines one or more women
- 14 forcibly made pregnant, with the intent of affecting the ethnic
- 15 composition of any population or carrying out other grave
- 16 violations of international law; and
- 17 (b) the perpetrator's conduct takes place in the context of, and is
- 18 associated with, an international armed conflict.
- 19 (2) In subsection (1):
- 20 *forcibly made pregnant* includes made pregnant by a consent that
- 21 was affected by deception or by natural, induced or age-related
- 22 incapacity.
- 23 (3) The penalty for an offence against subsection (1) is imprisonment
- 24 for a period not exceeding 25 years.
- 25 (4) To avoid doubt, this section does not affect any other law of the
- 26 Commonwealth or any law of a State or Territory.

27 **268.62 War crime—enforced sterilisation**

- 28 (1) A person (the *perpetrator*) commits an offence if:
- 29 (a) the perpetrator deprives one or more persons of biological
- 30 reproductive capacity; and

- 1 (b) the deprivation is not effected by a birth-control measure that
2 has a non-permanent effect in practice; and
3 (c) the perpetrator's conduct is neither justified by the medical or
4 hospital treatment of the person or persons nor carried out
5 with the consent of the person or persons; and
6 (d) the perpetrator's conduct takes place in the context of, and is
7 associated with, an international armed conflict.

8 (2) In subsection (1):

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

11 (3) The penalty for an offence against subsection (1) is imprisonment
12 for a period not exceeding 25 years.

13 **268.63 War crime—sexual violence**

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

15 (a) the perpetrator does either of the following:

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

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

20 by force, or by threat of force or coercion, against the person
21 or persons or against another person or by taking advantage
22 of the incapacity of the person or persons to give consent;
23 and

24 (b) the perpetrator's conduct also constitutes a grave breach of
25 the Geneva Conventions; and

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

28 (2) In subsection (1):

29 *consent* does not include consent affected by deception or by
30 natural, induced or age-related incapacity.

31 *threat of force or coercion* includes:

- 1 (a) a threat of force or coercion such as that caused by fear of
2 violence, duress, detention, psychological oppression or
3 abuse of power; or
4 (b) taking advantage of a coercive environment.
- 5 (3) The penalty for an offence against subsection (1) is imprisonment
6 for a period not exceeding 25 years.

7 **268.64 War crime—using protected persons as shields**

- 8 (1) A person (the *perpetrator*) commits an offence if:
9 (a) the perpetrator uses the presence of one or more civilians or
10 other persons protected under the international law of armed
11 conflict for the purpose of rendering a military objective
12 immune from attack or to shield, favour or impede military
13 operations; and
14 (b) the perpetrator's conduct takes place in the context of, and is
15 associated with, an international armed conflict.
- 16 (2) The penalty for an offence against subsection (1) is imprisonment
17 for a period not exceeding 17 years.

18 **268.65 War crime—attacking objects or persons using the**
19 **distinctive emblems of the Geneva Conventions**

- 20 (1) A person (the *perpetrator*) commits an offence if:
21 (a) the perpetrator attacks one or more persons, buildings,
22 medical units or transports or other objects using, in
23 conformity with international law, any of the distinctive
24 emblems of the Geneva Conventions; and
25 (b) the perpetrator intends the persons, buildings, units or
26 transports or other objects so using such an emblem to be the
27 object of the attack; and
28 (c) the perpetrator's conduct takes place in the context of, and is
29 associated with, an international armed conflict.
- 30 (2) The penalty for an offence against subsection (1) is imprisonment
31 for a period not exceeding 25 years.

1 **268.66 War crime—starvation as a method of warfare**

- 2 (1) A person (the *perpetrator*) commits an offence if:
3 (a) the perpetrator uses the starvation of civilians as a method of
4 warfare; and
5 (b) the perpetrator's conduct takes place in the context of, and is
6 associated with, an international armed conflict.

- 7 (2) In subsection (1):

8 *starvation of civilians* means the intentional deprivation of
9 civilians of objects indispensable to their survival, including by
10 wilfully impeding relief supplies that are provided for under the
11 Geneva Conventions.

- 12 (3) The penalty for an offence against subsection (1) is imprisonment
13 for a period not exceeding 17 years.

14 **268.67 War crime—conscripting, enlisting or using children**

- 15 (1) A person (the *perpetrator*) commits an offence if:
16 (a) the perpetrator conscripts or enlists one or more persons into
17 the national armed forces or uses one or more persons to
18 participate actively in hostilities; and
19 (b) the person or persons are under the age of 15 years; and
20 (c) the perpetrator knows or should know that the person or
21 persons are under that age; and
22 (d) the perpetrator's conduct takes place in the context of, and is
23 associated with, an international armed conflict.

- 24 (2) The penalty for an offence against subsection (1) is imprisonment
25 for a period not exceeding 17 years.

1 **Subdivision F—War crimes that are serious violations of article**
2 **3 common to the Geneva Conventions and are**
3 **committed in the course of an armed conflict that is**
4 **not an international armed conflict**

5 **268.68 Definition of religious personnel**

6 In this Subdivision:

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

10 **268.69 War crime—murder**

- 11 (1) A person (the *perpetrator*) commits an offence if:
12 (a) the perpetrator causes the death of one or more persons; and
13 (b) the person or persons are not taking an active part in the
14 hostilities; and
15 (c) the perpetrator is aware of the factual circumstances
16 establishing that the person or persons are not taking an
17 active part in the hostilities; and
18 (d) the perpetrator's conduct takes place in the context of, and is
19 associated with, an armed conflict that is not an international
20 armed conflict.
- 21 (2) To avoid doubt, a reference in subsection (1) to a person or persons
22 who are not taking an active part in the hostilities includes a
23 reference to:
24 (a) a person or persons who are *hors de combat*; or
25 (b) civilians, medical personnel or religious personnel who are
26 not taking an active part in the hostilities.
- 27 (3) The penalty for an offence against subsection (1) is imprisonment
28 for life or for a lesser period.

29 **268.70 War crime—mutilation**

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

- 1 (a) the perpetrator subjects one or more persons to mutilation,
2 such as by permanently disfiguring, or permanently disabling
3 or removing organs or appendages of, the person or persons;
4 and
5 (b) the perpetrator's conduct is neither justified by the medical,
6 dental or hospital treatment of the person or persons nor
7 carried out in the interest or interests of the person or
8 persons; and
9 (c) the person or persons are not taking an active part in the
10 hostilities; and
11 (d) the perpetrator is aware of the factual circumstances
12 establishing that the person or persons are not taking an
13 active part in the hostilities; and
14 (e) the conduct takes place in the context of, and is associated
15 with, an armed conflict that is not an international armed
16 conflict.
- 17 (2) To avoid doubt, a reference in subsection (1) to a person or persons
18 who are not taking an active part in the hostilities includes a
19 reference to:
20 (a) a person or persons who are *hors de combat*; or
21 (b) civilians, medical personnel or religious personnel who are
22 not taking an active part in the hostilities.
- 23 (3) The penalty for an offence against subsection (1) is imprisonment
24 for life or for a lesser period.

25 **268.71 War crime—cruel treatment**

- 26 (1) A person (the *perpetrator*) commits an offence if:
27 (a) the perpetrator inflicts severe physical or mental pain or
28 suffering upon one or more persons; and
29 (b) the person or persons are not taking an active part in the
30 hostilities; and
31 (c) the perpetrator is aware of the factual circumstances
32 establishing that the person or persons are not taking an
33 active part in the hostilities; and

- 1 (d) the perpetrator's conduct takes place in the context of, and is
2 associated with, an armed conflict that is not an international
3 armed conflict.
- 4 (2) To avoid doubt, a reference in subsection (1) to a person or persons
5 who are not taking an active part in the hostilities includes a
6 reference to:
7 (a) a person or persons who are *hors de combat*; or
8 (b) civilians, medical personnel or religious personnel who are
9 not taking an active part in the hostilities.
- 10 (3) The penalty for an offence against subsection (1) is imprisonment
11 for life or for a lesser period.

12 **268.72 War crime—torture**

- 13 (1) A person (the *perpetrator*) commits an offence if:
14 (a) the perpetrator inflicts severe physical or mental pain or
15 suffering upon one or more persons; and
16 (b) the perpetrator inflicts the pain or suffering for such purposes
17 as:
18 (i) obtaining information or a confession; or
19 (ii) a punishment, intimidation or coercion; or
20 (iii) a reason based on discrimination of any kind; and
21 (c) the person or persons are not taking an active part in the
22 hostilities; and
23 (d) the perpetrator is aware of the factual circumstances
24 establishing that the person or persons are not taking an
25 active part in the hostilities; and
26 (e) the perpetrator's conduct takes place in the context of, and is
27 associated with, an armed conflict that is not an international
28 armed conflict.
- 29 (2) To avoid doubt, a reference in subsection (1) to a person or persons
30 who are not taking an active part in the hostilities includes a
31 reference to:
32 (a) a person or persons who are *hors de combat*; or
33 (b) civilians, medical personnel or religious personnel who are
34 not taking an active part in the hostilities.

- 1 (3) The penalty for an offence against subsection (1) is imprisonment
2 for a period not exceeding 25 years.

3 **268.73 War crime—outrages upon personal dignity**

- 4 (1) A person (the *perpetrator*) commits an offence if:
5 (a) the perpetrator humiliates, degrades or otherwise violates the
6 dignity of one or more persons or the dignity of the body or
7 bodies of one or more dead persons; and
8 (b) the severity of the humiliation, degradation or other violation
9 is of such degree as to be generally recognised as an outrage
10 upon personal dignity; and
11 (c) the person or persons are not, or the dead person or dead
12 persons were not before his, her or their death, taking an
13 active part in the hostilities; and
14 (d) the perpetrator is aware of the factual circumstances
15 establishing that the person or persons are not, or that the
16 dead person or dead persons were not before his, her or their
17 death, taking an active part in the hostilities; and
18 (e) the perpetrator's conduct takes place in the context of, and is
19 associated with, an armed conflict that is not an international
20 armed conflict.
- 21 (2) To avoid doubt, a reference in subsection (1) to a person or persons
22 who are not, or a dead person or dead persons who were not before
23 his, her or their death, taking an active part in the hostilities
24 includes a reference to:
25 (a) a person or persons who:
26 (i) are *hors de combat*; or
27 (ii) are civilians, medical personnel or religious personnel
28 who are not taking an active part in the hostilities; or
29 (b) a dead person or dead persons who, before his, her or their
30 death:
31 (i) were *hors de combat*; or
32 (ii) were civilians, medical personnel or religious personnel
33 who were not taking an active part in the hostilities;
34 as the case may be.

1 (3) The penalty for an offence against subsection (1) is imprisonment
2 for a period not exceeding 10 years.

3 **268.74 War crime—taking hostages**

- 4 (1) A person (the *perpetrator*) commits an offence if:
- 5 (a) the perpetrator seizes, detains or otherwise holds hostage one
6 or more persons; and
 - 7 (b) the perpetrator threatens to kill, injure or continue to detain
8 the person or persons; and
 - 9 (c) the perpetrator intends to compel the government of a
10 country, an international organisation or a person or group of
11 persons to act or refrain from acting as an explicit or implicit
12 condition for the safety or the release of the person or
13 persons; and
 - 14 (d) the person or persons are not taking an active part in the
15 hostilities; and
 - 16 (e) the perpetrator is aware of the factual circumstances
17 establishing that the person or persons are not taking an
18 active part in the hostilities; and
 - 19 (f) the perpetrator's conduct takes place in the context of, and is
20 associated with, an armed conflict that is not an international
21 armed conflict.
- 22 (2) To avoid doubt, a reference in subsection (1) to a person or persons
23 who are not taking an active part in the hostilities includes a
24 reference to:
- 25 (a) a person or persons who are *hors de combat*; or
 - 26 (b) civilians, medical personnel or religious personnel who are
27 not taking an active part in the hostilities.
- 28 (3) The penalty for an offence against subsection (1) is imprisonment
29 for a period not exceeding 17 years.

30 **268.75 War crime—sentencing or execution without due process**

- 31 (1) A person (the *perpetrator*) commits an offence if:
- 32 (a) the perpetrator passes a sentence or executes one or more
33 persons; and

- 1 (b) the person or persons are not taking an active part in the
2 hostilities; and
3 (c) the perpetrator is aware of the factual circumstances
4 establishing that the person or persons are not taking an
5 active part in the hostilities; and
6 (d) either of the following applies:
7 (i) there was no previous judgment pronounced by a court;
8 (ii) the court that rendered judgment did not afford the
9 essential guarantees of independence and impartiality or
10 did not afford all the other judicial guarantees generally
11 recognised as indispensable under international law; and
12 (e) the perpetrator is aware of:
13 (i) if subparagraph (d)(i) applies—the absence of a
14 previous judgment; or
15 (ii) if subparagraph (d)(ii) applies—the denial of the
16 relevant guarantees and the fact that they are
17 indispensable to a fair trial; and
18 (f) the perpetrator’s conduct takes place in the context of, and is
19 associated with, an armed conflict that is not an international
20 armed conflict.

- 21 (2) To avoid doubt, a reference in subsection (1) to a person or persons
22 who are not taking an active part in the hostilities includes a
23 reference to:
24 (a) a person or persons who are *hors de combat*; or
25 (b) civilians, medical personnel or religious personnel who are
26 not taking an active part in the hostilities.
27 (3) The penalty for an offence against subsection (1) is imprisonment
28 life or for a lesser period.

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

32 **268.76 War crime—attacking civilians**

- 33 (1) A person (the *perpetrator*) commits an offence if:
34 (a) the perpetrator directs an attack; and
-

- 1 (b) the object of the attack is a civilian population as such or
- 2 individual civilians not taking direct part in hostilities; and
- 3 (c) the perpetrator's conduct takes place in the context of, and is
- 4 associated with, an armed conflict that is not an international
- 5 armed conflict.

6 (2) The penalty for an offence against subsection (1) is imprisonment
7 for life or for a lesser period.

8 **268.77 War crime—attacking objects or persons using the**
9 **distinctive emblems of the Geneva Conventions**

- 10 (1) A person (the *perpetrator*) commits an offence if:
- 11 (a) the perpetrator attacks one or more persons, buildings,
 - 12 medical units or transports or other objects using, in
 - 13 conformity with international law, any of the distinctive
 - 14 emblems of the Geneva Conventions; and
 - 15 (b) the perpetrator intends the persons, buildings, units or
 - 16 transports or other objects so using such an emblem to be the
 - 17 object of the attack; and
 - 18 (c) the perpetrator's conduct takes place in the context of, and is
 - 19 associated with, an armed conflict that is not an international
 - 20 armed conflict.

21 (2) The penalty for an offence against subsection (1) is imprisonment
22 for a period not exceeding 25 years.

23 **268.78 War crime—attacking personnel or objects involved in a**
24 **humanitarian assistance or peacekeeping mission**

- 25 (1) A person (the *perpetrator*) commits an offence if:
- 26 (a) the perpetrator directs an attack; and
 - 27 (b) the object of the attack is personnel, installations, material,
 - 28 units or vehicles involved in a humanitarian assistance or
 - 29 peacekeeping mission in accordance with the Charter of the
 - 30 United Nations; and
 - 31 (c) the personnel, installations, material, units or vehicles are
 - 32 entitled to the protection given to civilians or civilian objects
 - 33 under the international law of armed conflict; and

- 1 (d) the perpetrator is aware of the factual circumstances that
2 establish that protection; and
3 (e) the perpetrator's conduct takes place in the context of, and is
4 associated with, an armed conflict that is not an international
5 armed conflict.
- 6 (2) The penalty for an offence against subsection (1) is imprisonment
7 for life or for a lesser period.

8 **268.79 War crime—attacking protected objects**

- 9 (1) A person (the *perpetrator*) commits an offence if:
10 (a) the perpetrator directs an attack; and
11 (b) the object of the attack is any one or more of the following
12 that are not military objectives:
13 (i) buildings dedicated to religion, education, art, science or
14 charitable purposes;
15 (ii) historic monuments;
16 (iii) hospitals or places where the sick and wounded are
17 collected; and
18 (c) the perpetrator's conduct takes place in the context of, and is
19 associated with, an armed conflict that is not an international
20 armed conflict.
- 21 (2) The penalty for an offence against subsection (1) is imprisonment
22 for a period not exceeding 17 years.

23 **268.80 War crime—pillaging**

- 24 (1) A person (the *perpetrator*) commits an offence if:
25 (a) the perpetrator appropriates certain property; and
26 (b) the perpetrator intends to deprive the owner of the property
27 and to appropriate it for private or personal use; and
28 (c) the appropriation is without the consent of the owner; and
29 (d) the perpetrator's conduct takes place in the context of, and is
30 associated with, an armed conflict that is not an international
31 armed conflict.

- 1 (2) The penalty for an offence against subsection (1) is imprisonment
2 for a period not exceeding 15 years.

3 **268.81 War crime—rape**

- 4 (1) A person (the *perpetrator*) commits an offence if:
5 (a) the perpetrator sexually penetrates another person without the
6 consent of that person; and
7 (b) the perpetrator knows about, or is reckless as to, the lack of
8 consent; and
9 (c) the perpetrator's conduct takes place in the context of, and is
10 associated with, an armed conflict that is not an international
11 armed conflict.

- 12 (2) In this section:

13 *sexually penetrate* means:

- 14 (a) penetrate (to any extent) the genitalia or anus of a person by
15 any part of the body of another person or by any object
16 manipulated by that other person; or
17 (b) penetrate (to any extent) the mouth of a person by the penis
18 of another person; or
19 (c) continue to sexually penetrate as defined in paragraph (a) or
20 (b).

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

- 24 (4) In this section, the genitalia or other parts of the body of a person
25 include surgically constructed genitalia or other parts of the body
26 of the person.

- 27 (5) The penalty for an offence against subsection (1) is imprisonment
28 for a period not exceeding 25 years.

29 **268.82 War crime—sexual slavery**

- 30 (1) A person (the *perpetrator*) commits an offence if:
31 (a) the perpetrator's conduct causes another person to enter into
32 or remain in sexual slavery; and
-

- 1 (b) the perpetrator intends to cause, or is reckless as to causing,
2 that sexual slavery; and
3 (c) the perpetrator's conduct takes place in the context of, and is
4 associated with, an armed conflict that is not an international
5 armed conflict.
- 6 (2) For the purposes of this section, *sexual slavery* is the condition of a
7 person who provides sexual services and who, because of the use
8 of force or threats:
9 (a) is not free to cease providing sexual services; or
10 (b) is not free to leave the place or area where the person
11 provides sexual services.
- 12 (3) In this section:
13 *sexual service* means the commercial use or display of the body of
14 the person providing the service for the sexual gratification of
15 others.
16 *threat* means:
17 (a) a threat of force; or
18 (b) a threat to cause a person's deportation; or
19 (c) a threat of any other detrimental action unless there are
20 reasonable grounds for the threat of that action in connection
21 with the provision of sexual services by a person.
- 22 (4) The penalty for an offence against subsection (1) is imprisonment
23 for a period not exceeding 25 years.

24 **268.83 War crime—enforced prostitution**

- 25 (1) A person (the *perpetrator*) commits an offence if:
26 (a) the perpetrator causes one or more persons to engage in one
27 or more acts of a sexual nature:
28 (i) by force, or by threat of force or coercion, against the
29 person or persons or against another person; or
30 (ii) by taking advantage of the incapacity of the person or
31 persons to give consent; and

- 1 (b) the perpetrator or another person obtains or expects to obtain
2 pecuniary or other advantage in exchange for, or in
3 connection with, the acts of a sexual nature; and
4 (c) the perpetrator's conduct takes place in the context of, and is
5 associated with, an armed conflict that is not an international
6 armed conflict.
- 7 (2) In subsection (1):
- 8 *consent* does not include consent affected by deception or by
9 natural, induced or age-related incapacity.
- 10 *threat of force or coercion* includes:
- 11 (a) a threat of force or coercion such as that caused by fear of
12 violence, duress, detention, psychological oppression or
13 abuse of power; or
14 (b) taking advantage of a coercive environment.
- 15 (3) The penalty for an offence against subsection (1) is imprisonment
16 for a period not exceeding 25 years.

17 **268.84 War crime—forced pregnancy**

- 18 (1) A person (the *perpetrator*) commits an offence if:
- 19 (a) the perpetrator unlawfully confines one or more women
20 forcibly made pregnant, with the intent of affecting the ethnic
21 composition of any population or carrying out other grave
22 violations of international law; and
23 (b) the perpetrator's conduct takes place in the context of, and is
24 associated with, an armed conflict that is not an international
25 armed conflict.
- 26 (2) In subsection (1):
- 27 *forcibly made pregnant* includes made pregnant by a consent that
28 was affected by deception or by natural, induced or age-related
29 incapacity.
- 30 (3) The penalty for an offence against subsection (1) is imprisonment
31 for a period not exceeding 25 years.

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

3 **268.85 War crime—enforced sterilisation**

- 4 (1) A person (the *perpetrator*) commits an offence if:
5 (a) the perpetrator deprives one or more persons of biological
6 reproductive capacity; and
7 (b) the deprivation is not effected by a birth-control measure that
8 has a non-permanent effect in practice; and
9 (c) the perpetrator's conduct is neither justified by the medical or
10 hospital treatment of the person or persons nor carried out
11 with the consent of the person or persons; and
12 (d) the perpetrator's conduct takes place in the context of, and is
13 associated with, an armed conflict that is not an international
14 armed conflict.
- 15 (2) In subsection (1):
16 *consent* does not include consent effected by deception or by
17 natural, induced or age-related incapacity.
- 18 (3) The penalty for an offence against subsection (1) is imprisonment
19 for a period not exceeding 25 years.

20 **268.86 War crime—sexual violence**

- 21 (1) A person (the *perpetrator*) commits an offence if:
22 (a) the perpetrator does either of the following:
23 (i) commits an act or acts of a sexual nature against one or
24 more persons;
25 (ii) causes one or more persons to engage in an act or acts
26 of a sexual nature;
27 by force, or by threat of force or coercion, against the person
28 or persons or against another person or by taking advantage
29 of the incapacity of the person or persons to give consent;
30 and
31 (b) the perpetrator's conduct also constitutes a serious violation
32 of article 3 common to the Geneva Conventions; and

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

4 (2) In subsection (1):

5 **consent** does not include consent affected by deception or by
6 natural, induced or age-related incapacity.

7 **threat of force or coercion** includes:

- 8 (a) a threat of force or coercion such as that caused by fear of
9 violence, duress, detention, psychological oppression or
10 abuse of power, against the person or another person; or
11 (b) taking advantage of a coercive environment.

12 (3) The penalty for an offence against subsection (1) is imprisonment
13 for a period not exceeding 25 years.

14 **268.87 War crime—conscripting, enlisting or using children**

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

- 16 (a) the perpetrator conscripts or enlists one or more persons into
17 an armed force or group or uses one or more persons to
18 participate actively in hostilities; and
19 (b) the person or persons are under the age of 15 years; and
20 (c) the perpetrator knows or should know that the person or
21 persons are under that age; and
22 (d) the perpetrator's conduct takes place in the context of, and is
23 associated with, an armed conflict that is not an international
24 armed conflict.

25 (2) The penalty for an offence against subsection (1) is imprisonment
26 for a period not exceeding 17 years.

27 **268.88 War crime—displacing civilians**

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

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

- 1 (b) the order is not justified by the security of the civilians
2 involved or by imperative military necessity; and
3 (c) the perpetrator's conduct takes place in the context of, and is
4 associated with, an armed conflict that is not an international
5 armed conflict.
- 6 (2) The penalty for an offence against subsection (1) is imprisonment
7 for a period not exceeding 17 years.

8 **268.89 War crime—treacherously killing or wounding**

- 9 (1) A person (the *perpetrator*) commits an offence if:
10 (a) the perpetrator invites the confidence or belief of one or more
11 combatant adversaries that they are entitled to, or are obliged
12 to accord, protection under rules of international law
13 applicable in armed conflict; and
14 (b) the perpetrator kills or injures the person or persons; and
15 (c) the perpetrator makes use of that confidence or belief in
16 killing or injuring the person or persons; and
17 (d) the person or persons belong to an adverse party; and
18 (e) the perpetrator's conduct takes place in the context of, and is
19 associated with, an armed conflict that is not an international
20 armed conflict.
- 21 (2) The penalty for an offence against subsection (1) is imprisonment
22 for life or for a lesser period.

23 **268.90 War crime—denying quarter**

- 24 (1) A person (the *perpetrator*) commits an offence if:
25 (a) the perpetrator declares or orders that there are to be no
26 survivors; and
27 (b) the declaration or order is given in order to threaten an
28 adversary or to conduct hostilities on the basis that there are
29 to be no survivors; and
30 (c) the perpetrator is in a position of effective command or
31 control over the subordinate forces to which the declaration
32 or order is directed; and

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

4 (2) The penalty for an offence against subsection (1) is imprisonment
5 for life or for a lesser period.

6 **268.91 War crime—mutilation**

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

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

12 (b) the perpetrator's conduct causes the death, or seriously
13 endangers the health, of the person or persons; and

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

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

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

22 (2) The penalty for an offence against subsection (1) is imprisonment
23 for life or for a lesser period.

24 **268.92 War crime—medical or scientific experiments**

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

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

28 (b) the experiment causes the death, or seriously endangers the
29 health, of the person or persons; and

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

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

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

6 (2) The penalty for an offence against subsection (1) is imprisonment
7 for life or for a lesser period.

8 **268.93 War crime—destroying or seizing an adversary’s property**

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

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

11 (b) the property is property of an adversary; and

12 (c) the property is protected from the destruction or seizure
13 under the international law of armed conflict; and

14 (d) the perpetrator is aware of the factual circumstances that
15 establish that the property is so protected; and

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

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

21 (2) The penalty for an offence against subsection (1) is imprisonment
22 for a period not exceeding 15 years.

23 **Subdivision H—War crimes that are grave breaches of**
24 **Protocol I to the Geneva Conventions**

25 **268.94 War crime—medical procedure**

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

27 (a) the perpetrator subjects one or more persons to a medical
28 procedure; and

29 (b) the person or persons are in the power of, or are interned,
30 detained or otherwise deprived of liberty by, the country of
31 the perpetrator as a result of an international armed conflict;
32 and

- 1 (c) the procedure seriously endangers the physical or mental
2 health or integrity of the person or persons; and
3 (d) the perpetrator's conduct is neither justified by the state of
4 health of the person or persons nor consistent with generally
5 accepted medical standards that would be applied under
6 similar medical circumstances to persons who are nationals
7 of the party of the perpetrator and are in no way deprived of
8 liberty; and
9 (e) the conduct takes place in the context of, and is associated
10 with, an international armed conflict.
- 11 (2) The penalty for an offence against subsection (1) is imprisonment
12 for a period not exceeding 25 years.

13 **268.95 War crime—mutilation**

- 14 (1) A person (the *perpetrator*) commits an offence if:
15 (a) the perpetrator subjects one or more persons to mutilation,
16 such as by permanently disfiguring, or permanently disabling
17 or removing organs or appendages of, the person or persons;
18 and
19 (b) the perpetrator's conduct seriously endangers the physical or
20 mental health, or the integrity, of the person or persons; and
21 (c) the conduct is neither justified by the state of health of the
22 person or persons nor consistent with generally accepted
23 medical standards that would be applied under similar
24 medical circumstances to persons who are nationals of the
25 party of the perpetrator and are in no way deprived of liberty;
26 and
27 (d) the person or persons are in the power of, or are interned,
28 detained or otherwise deprived of liberty by, an adverse party
29 as a result of an international armed conflict; and
30 (e) the conduct takes place in the context of, and is associated
31 with, an international armed conflict or such a situation.
- 32 (2) The penalty for an offence against subsection (1) is imprisonment
33 for a period not exceeding 25 years.

1 **268.96 War crime—medical or scientific experiments**

- 2 (1) A person (the *perpetrator*) commits an offence if:
- 3 (a) the perpetrator subjects one or more persons to a medical or
- 4 scientific experiment; and
- 5 (b) the experiment seriously endangers the physical or mental
- 6 health or integrity of the person or persons; and
- 7 (c) the perpetrator’s conduct is neither justified by the state of
- 8 health of the person or persons nor consistent with generally
- 9 accepted medical standards that would be applied under
- 10 similar medical circumstances to persons who are nationals
- 11 of the party of the perpetrator and are in no way deprived of
- 12 liberty; and
- 13 (d) the person or persons are in the power of, or are interned,
- 14 detained or otherwise deprived of liberty by, an adverse party
- 15 as a result of an international armed conflict; and
- 16 (e) the conduct takes place in the context of, and is associated
- 17 with, an international armed conflict.
- 18 (2) The penalty for an offence against subsection (1) is imprisonment
- 19 for a period not exceeding 25 years.

20 **268.97 War crime—removal of blood, tissue or organs for**

21 **transplantation**

- 22 (1) A person (the *perpetrator*) commits an offence if:
- 23 (a) the perpetrator removes from one or more persons blood,
- 24 tissue or organs for transplantation; and
- 25 (b) in the case of the removal of blood—the removal:
- 26 (i) is not for transfusion; or
- 27 (ii) is for transfusion without the consent of the person or
- 28 persons; and
- 29 (c) in the case of the removal of skin—the removal:
- 30 (i) is not for grafting; or
- 31 (ii) is for grafting without the consent of the person or
- 32 persons; and
- 33 (d) the perpetrator’s conduct seriously endangers the physical or
- 34 mental health, or the integrity, of the person or persons; and

- 1 (e) the intent of the removal is non-therapeutic; and
2 (f) the removal is not carried out under conditions consistent
3 with generally accepted medical standards and controls
4 designed for the benefit of the person or persons and of the
5 recipient; and
6 (g) the person or persons are in the power of, or are interned,
7 detained or otherwise deprived of liberty by, an adverse party
8 as a result of an international armed conflict; and
9 (h) the conduct takes place in the context of, and is associated
10 with, an international armed conflict.

11 (2) In subsection (1):

12 **consent** means consent given voluntarily and without any coercion
13 or inducement.

14 (3) The penalty for an offence against subsection (1) is imprisonment
15 for a period not exceeding 25 years.

16 **268.98 War crime—attacking civilians**

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

- 18 (a) the perpetrator directs an attack; and
19 (b) the object of the attack is a civilian population as such or
20 individual civilians not taking direct part in hostilities; and
21 (c) the perpetrator intends the civilian population as such, or
22 individual civilians not taking direct part in hostilities, to be
23 the object of the attack; and
24 (d) the attack results in death or serious injury to body or health;
25 and
26 (e) the perpetrator's conduct takes place in the context of, and is
27 associated with, an international armed conflict.

28 (2) The penalty for an offence against subsection (1) is imprisonment
29 for life or for a lesser period.

1 **268.99 War crime—indiscriminate attack against civilians or**
2 **civilian objects resulting in excessive loss of life, injury to**
3 **civilians or damage to civilian objects**

- 4 (1) A person (the *perpetrator*) commits an offence if:
- 5 (a) the perpetrator launches an indiscriminate attack against
6 civilians or civilian objects; and
- 7 (b) the attack is such that it will cause loss of life, injury to
8 civilians, or damage to civilian objects, to such an extent as
9 to be excessive in relation to the concrete and direct military
10 advantage anticipated; and
- 11 (c) the perpetrator knows that the attack will cause loss of life,
12 injury to civilians, or damage to civilian objects, to such an
13 extent; and
- 14 (d) the attack results in death or serious injury to body or health;
15 and
- 16 (e) the perpetrator's conduct takes place in the context of, and is
17 associated with, an international armed conflict.
- 18 (2) The penalty for an offence against subsection (1) is imprisonment
19 for life or for a lesser period.

20 **268.100 War crime—attack against works or installations**
21 **containing dangerous forces resulting in excessive loss of**
22 **life, injury to civilians or damage to civilian objects**

- 23 (1) A person (the *perpetrator*) commits an offence if:
- 24 (a) the perpetrator launches an attack against works or
25 installations containing dangerous forces; and
- 26 (b) the attack is such that it will cause loss of life, injury to
27 civilians, or damage to civilian objects, to such an extent as
28 to be excessive in relation to the concrete and direct military
29 advantage anticipated; and
- 30 (c) the perpetrator knows that the attack will cause loss of life,
31 injury to civilians, or damage to civilian objects, to such an
32 extent; and
- 33 (d) the attack results in death or serious injury to body or health;
34 and

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

3 (2) The penalty for an offence against subsection (1) is imprisonment
4 for life or for a lesser period.

5 **268.101 War crime—attacking undefended places or demilitarized**
6 **zones**

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

8 (a) the perpetrator attacks one or more towns, villages,
9 dwellings, buildings or demilitarized zones; and

10 (b) the towns, villages, dwellings or buildings are open for
11 unresisted occupation; and

12 (c) the attack results in death or serious injury to body or health;
13 and

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

16 (2) The penalty for an offence against subsection (1) is imprisonment
17 for life or for a lesser period.

18 **268.102 War crime—attacking a person who is *hors de combat***

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

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

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

22 (c) the perpetrator is aware of the factual circumstances that
23 establish that the person or persons are *hors de combat*; and

24 (d) the attack results in death or serious injury to body or health;
25 and

26 (e) the perpetrator knows that the attack can result in death or
27 serious injury to body or health; and

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

30 (2) The penalty for an offence against subsection (1) is imprisonment
31 for life or for a lesser period.

1 **268.103 War crime—improper use of the distinctive emblems of the**
2 **Geneva Conventions**

- 3 (1) A person (the *perpetrator*) commits an offence if:
4 (a) the perpetrator uses any of the distinctive emblems of the
5 Geneva Conventions; and
6 (b) the perpetrator's use of the emblem is perfidious within the
7 meaning of Article 37 of Protocol I to the Geneva
8 Conventions; and
9 (c) the perpetrator's conduct results in death or serious injury to
10 body or health; and
11 (d) the conduct takes place in the context of, and is associated
12 with, an international armed conflict.
- 13 (2) The penalty for an offence against subsection (1) is imprisonment
14 for life or for a lesser period.

15 **268.104 War crime—transfer of population**

- 16 (1) A person (the *perpetrator*) commits an offence if:
17 (a) the perpetrator:
18 (i) authorises, organises or directs, or participates in the
19 authorisation, organisation or direction of, or
20 participates in, the transfer of parts of the civilian
21 population of the perpetrator's own country into
22 territory that the country occupies; or
23 (ii) authorises, organises or directs, or participates in the
24 authorisation, organisation or direction of, or
25 participates in, the deportation or transfer of all or parts
26 of the population of territory occupied by the
27 perpetrator's own country within or outside that
28 territory; and
29 (b) the perpetrator's conduct takes place in the context of, and is
30 associated with, an international armed conflict.
- 31 (2) The penalty for an offence against subsection (1) is imprisonment
32 for a period not exceeding 17 years.

1 **268.105 War crime—unjustifiable delay in the repatriation of**
2 **prisoners of war or civilians**

- 3 (1) A person (the *perpetrator*) commits an offence if:
4 (a) one or more persons are in the power of, or are interned,
5 detained or otherwise deprived of liberty by, an adverse party
6 as a result of an international armed conflict; and
7 (b) the perpetrator unjustifiably delays the repatriation of the
8 person or persons to the person's own country or the persons'
9 own countries in violation of Part IV of the Third Geneva
10 Convention or Chapter XII of Section IV of Part III of the
11 Fourth Geneva Convention.
- 12 (2) The penalty for an offence against subsection (1) is imprisonment
13 for a period not exceeding 10 years.

14 **268.106 War crime—apartheid**

- 15 (1) A person (the *perpetrator*) commits an offence if:
16 (a) the perpetrator commits against one or more persons an act
17 that is a proscribed inhumane act or is of a nature and gravity
18 similar to any proscribed inhumane act; and
19 (b) the perpetrator is aware of the factual circumstances that
20 establish the character of the act; and
21 (c) the perpetrator's conduct is committed in the context of an
22 institutionalised regime of systematic oppression and
23 domination by one racial group over any other racial group or
24 groups; and
25 (d) the perpetrator intends to maintain the regime by the conduct;
26 and
27 (e) the conduct takes place in the context of, and is associated
28 with, an international armed conflict.
- 29 (2) The penalty for an offence against subsection (1) is imprisonment
30 for a period not exceeding 17 years.

31 **268.107 War crime—inhuman and degrading practices involving**
32 **outrages upon personal dignity**

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

- 1 (a) the perpetrator engages in inhuman or degrading practices
2 against one or more persons or against the body or bodies of
3 one or more dead persons; and
4 (b) the severity of the perpetrator's conduct is of such a degree
5 as to be generally recognised as an outrage upon personal
6 dignity; and
7 (c) the perpetrator's conduct is committed in the context of an
8 institutionalised regime of systematic oppression and
9 domination by one racial group over any other racial group or
10 groups; and
11 (d) the perpetrator intends to maintain the regime by the conduct;
12 and
13 (e) the perpetrator's conduct takes place in the context of, and is
14 associated with, an international armed conflict.
- 15 (2) The penalty for an offence against subsection (1) is imprisonment
16 for a period not exceeding 17 years.

17 **268.108 War crime—attacking protected objects**

- 18 (1) A person (the *perpetrator*) commits an offence if:
19 (a) the perpetrator directs an attack; and
20 (b) the object of the attack is any one or more of the following
21 that are not used in support of the military effort and are not
22 located in the immediate proximity of military objectives:
23 (i) clearly recognised historic monuments;
24 (ii) works of art;
25 (iii) places of worship; and
26 (c) the monuments, works of art and places of worship constitute
27 the cultural or spiritual heritage of peoples and have been
28 given special protection by special arrangement (for example,
29 within the framework of a competent international
30 organisation); and
31 (d) the perpetrator's conduct takes place in the context of, and is
32 associated with, an international armed conflict.
- 33 (2) The penalty for an offence against subsection (1) is imprisonment
34 for a period not exceeding 17 years.

1 **Subdivision J—Crimes against the administration of the justice**
2 **of the International Criminal Court**

3 **268.109 Perjury**

- 4 (1) A person commits the offence of perjury if:
- 5 (a) the person makes a sworn statement in or for the purposes of
6 a proceeding before the International Criminal Court; and
7 (b) the statement is false; and
8 (c) the person is reckless as to whether or not the statement is
9 false.
- 10 (2) A person who is an interpreter commits the offence of perjury if:
- 11 (a) the person, by a sworn statement, gives an interpretation of a
12 statement or other thing in or for the purposes of a
13 proceeding before the International Criminal Court; and
14 (b) the interpretation is false or misleading; and
15 (c) the person is reckless as to whether or not the interpretation
16 is false or misleading.
- 17 (3) The penalty for an offence against subsection (1) or (2) is
18 imprisonment for a period not exceeding 7 years.

19 **268.110 Falsifying evidence**

- 20 (1) A person commits an offence if the person makes false evidence
21 with the intention of:
- 22 (a) influencing a decision on the institution of a proceeding
23 before the International Criminal Court; or
24 (b) influencing the outcome of such a proceeding.
- 25 (2) A person commits an offence if the person:
- 26 (a) uses evidence that is false evidence and that the person
27 believes is false evidence; and
28 (b) is reckless as to whether or not the use of the evidence could:
- 29 (i) influence a decision on the institution of a proceeding
30 before the International Criminal Court; or
31 (ii) influence the outcome of such a proceeding.

1 (3) The penalty for an offence against subsection (1) or (2) is
2 imprisonment for a period not exceeding 7 years.

3 (4) For the purposes of this section, *making* evidence includes altering
4 evidence, but does not include perjury.

5 **268.111 Destroying or concealing evidence**

6 (1) A person commits an offence if the person destroys or conceals
7 evidence with the intention of:

8 (a) influencing a decision on the institution of a proceeding
9 before the International Criminal Court; or

10 (b) influencing the outcome of such a proceeding.

11 (2) The penalty for an offence against subsection (1) is imprisonment
12 for a period not exceeding 7 years.

13 (3) For the purposes of this section, *destroying* evidence includes
14 making the evidence illegible, indecipherable or otherwise
15 incapable of being identified.

16 **268.112 Deceiving witnesses**

17 (1) A person commits an offence if the person deceives another person
18 with the intention that the other person or a third person will:

19 (a) give false evidence in a proceeding before the International
20 Criminal Court; or

21 (b) withhold true evidence at such a proceeding.

22 (2) The penalty for an offence against subsection (1) is imprisonment
23 for a period not exceeding 5 years.

24 **268.113 Corrupting witnesses or interpreters**

25 (1) A person commits an offence if the person provides, or offers or
26 promises to provide, a benefit to another person with the intention
27 that the other person or a third person will:

28 (a) not attend as a witness at a proceeding before the
29 International Criminal Court; or

30 (b) give false evidence at such a proceeding; or

- 1 (c) withhold true evidence at such a proceeding.
- 2 (2) A person commits an offence if the person asks for, or receives or
3 agrees to receive, a benefit for himself, herself or another person
4 with the intention that he, she or another person will:
- 5 (a) not attend as a witness at a proceeding before the
6 International Criminal Court; or
- 7 (b) give false evidence at such a proceeding; or
- 8 (c) withhold true evidence at such a proceeding.
- 9 (3) A person commits an offence if the person provides, or offers or
10 promises to provide, a benefit to another person with the intention
11 that the other person or a third person will:
- 12 (a) not attend as an interpreter at a proceeding before the
13 International Criminal Court; or
- 14 (b) give a false or misleading interpretation as an interpreter at
15 such a proceeding.
- 16 (4) The penalty for an offence against subsection (1), (2) or (3) is
17 imprisonment for a period not exceeding 5 years.

18 **268.114 Threatening witnesses or interpreters**

- 19 (1) A person commits an offence if the person causes or threatens to
20 cause any detriment to another person with the intention that the
21 other person or a third person will:
- 22 (a) not attend as a witness at a proceeding before the
23 International Criminal Court; or
- 24 (b) give false evidence at such a proceeding; or
- 25 (c) withhold true evidence at such a proceeding.
- 26 (2) A person commits an offence if the person causes or threatens to
27 cause any detriment to another person with the intention that the
28 other person or a third person will:
- 29 (a) not attend as an interpreter at a proceeding before the
30 International Criminal Court; or
- 31 (b) give a false or misleading interpretation as an interpreter in
32 such a proceeding.

- 1 (3) The penalty for an offence against subsection (1) or(2) is
2 imprisonment for a period not exceeding 5 years.

3 **268.115 Preventing witnesses or interpreters**

4 (1) A person commits an offence if the person, by his or her conduct,
5 intentionally prevents another person from attending as a witness
6 or interpreter at a proceeding before the International Criminal
7 Court.

8 (2) The penalty for an offence against subsection (1) is imprisonment
9 for a period not exceeding 5 years.

10 (3) This section does not apply to conduct that constitutes an offence
11 against section 268.112, 268.113, 268.114, 268.116 or 268.117.

12 **268.116 Preventing production of things in evidence**

13 (1) A person commits an offence if the person, by his or her conduct,
14 intentionally prevents another person from producing in evidence
15 at a proceeding before the International Criminal Court a thing that
16 is legally required to be produced.

17 (2) The penalty for an offence against subsection (1) is imprisonment
18 for a period not exceeding 5 years.

19 **268.117 Reprisals against witnesses**

20 (1) A person commits an offence if the person causes or threatens to
21 cause any detriment to another person who was a witness in a
22 proceeding before the International Criminal Court:

23 (a) because of anything done by the other person in or for the
24 purposes of the proceeding; and

25 (b) in the belief that the other person was a witness who had
26 done that thing.

27 (2) The penalty for an offence against subsection (1) is imprisonment
28 for a period not exceeding 5 years.

29 (3) It is a defence to a prosecution for an offence against subsection (1)
30 that:

- 1 (a) the detriment to the witness was not (apart from this section)
2 an offence; and
3 (b) the witness committed perjury in the proceeding before the
4 International Criminal Court.

5 (4) In this section:

6 *witness* includes:

- 7 (a) a person who attends at a proceeding before the International
8 Criminal Court as a witness but is not called as a witness; or
9 (b) an interpreter.

10 **268.118 Reprisals against officials of the International Criminal**
11 **Court**

- 12 (1) A person commits an offence if the person causes or threatens to
13 cause any detriment to another person who is an official of the
14 International Criminal Court:
15 (a) because of anything done by the other person; and
16 (b) in the belief that the other person was an official of that Court
17 who had done that thing for the purposes of a proceeding
18 before that Court.

19 (2) The penalty for an offence against subsection (1) is imprisonment
20 for a period not exceeding 5 years.

21 **268.119 Perverting the course of justice**

22 (1) A person commits an offence if the person, by his or her conduct,
23 intentionally perverts the course of justice in respect of the
24 International Criminal Court.

25 (2) The penalty for an offence against subsection (1) is imprisonment
26 for a period not exceeding 5 years.

27 (3) This section does not apply to conduct that constitutes the
28 publication of any matter.

29 (4) In this section:

30 *perverts* includes obstructs, prevents or defeats.

1 **268.120 Receipt of a corrupting benefit by an official of the**
2 **International Criminal Court**

- 3 (1) A person who is an official of the International Criminal Court
4 commits an offence if:
5 (a) the person dishonestly:
6 (i) asks for a benefit for himself, herself or another person;
7 or
8 (ii) receives or obtains a benefit for himself, herself or
9 another person; or
10 (iii) agrees to receive or obtain a benefit for himself, herself
11 or another person; and
12 (b) the person does so with the intention that the exercise of the
13 person's duties as an official of the International Criminal
14 Court will be influenced.
- 15 (2) The penalty for an offence against subsection (1) is imprisonment
16 for a period not exceeding 10 years.
- 17 (3) For the purposes of subsection (1), it is immaterial whether the
18 benefit is in the nature of a reward.

19 **Subdivision K—Miscellaneous**

20 **268.121 Responsibility of commanders and other superiors**

- 21 (1) The criminal responsibility imposed by this section is in addition to
22 other grounds of criminal responsibility under the law in force in
23 Australia for acts or omissions that are offences under this
24 Division.
- 25 (2) A military commander or person effectively acting as a military
26 commander is criminally responsible for offences under this
27 Division committed by forces under his or her effective command
28 and control, or effective authority and control, as the case may be,
29 as a result of his or her failure to exercise control properly over
30 those forces, where:
31 (a) the military commander or person either knew or, owing to
32 the circumstances at the time, should have known that the

- 1 forces were committing or about to commit such offences;
2 and
3 (b) the military commander or person failed to take all necessary
4 and reasonable measures within his or her power to prevent
5 or repress their commission or to submit the matter to the
6 competent authorities for investigation and prosecution.
- 7 (3) With respect to superior and subordinate relationships not
8 described in subsection (2), a superior is criminally responsible for
9 offences against this Division committed by subordinates under his
10 or her effective authority and control, as a result of his or her
11 failure to exercise control properly over those subordinates, where:
12 (a) the superior either knew, or consciously disregarded
13 information that clearly indicated, that the subordinates were
14 committing or about to commit such offences; and
15 (b) the offences concerned activities that were within the
16 effective responsibility and control of the superior; and
17 (c) the superior failed to take all necessary and reasonable
18 measures within his or her power to prevent or repress their
19 commission or to submit the matter to the competent
20 authorities for investigation and prosecution.

21 **268.122 Defence of superior orders**

- 22 (1) The fact that genocide or a crime against humanity has been
23 committed by a person pursuant to an order of a Government or of
24 a superior, whether military or civilian, does not relieve the person
25 of criminal responsibility.
- 26 (2) The fact that a war crime has been committed by a person pursuant
27 to an order of a Government or of a superior, whether military or
28 civilian, does not relieve the person of criminal responsibility
29 unless:
30 (a) the person was under a legal obligation to obey orders of the
31 Government or the superior; and
32 (b) the person did not know that the order was unlawful; and
33 (c) the order was not manifestly unlawful.

1 **268.123 Geographical jurisdiction**

- 2 (1) Section 15.4 (extended geographical jurisdiction—Category D)
3 applies to genocide, crimes against humanity and war crimes.
- 4 (2) Section 15.3 (extended geographical jurisdiction—Category C)
5 applies to crimes against the administration of the justice of the
6 International Criminal Court.

7 **268.124 Double jeopardy**

8 A person cannot be tried by a federal court or a court of a State or
9 Territory for an offence under this Division if the person has
10 already been convicted or acquitted by the International Criminal
11 Court for an offence constituted by substantially the same conduct
12 as constituted the offence under this Division.

13 **268.125 Offences related to exercise of jurisdiction of International
14 Criminal Court**

- 15 (1) A person must not:
16 (a) intentionally contravene an order that the International
17 Criminal Court makes while sitting in Australia; or
18 (b) otherwise intentionally hinder the International Criminal
19 Court in performing its functions while sitting in Australia.

20 Penalty: Imprisonment for 5 years.

- 21 (2) In this section:

22 *Australia* includes all the external Territories.

23 **268.126 Saving of other laws**

24 This Division is not intended to exclude or limit any other law of
25 the Commonwealth or any law of a State or Territory.

26 **268.127 Bringing proceedings under this Division**

- 27 (1) Proceedings for an offence under this Division must not be
28 commenced without the Attorney-General's written consent.

1 (2) However, a person may be arrested, charged, remanded in custody,
2 or released on bail, in connection with an offence under this
3 Division before the necessary consent has been given.

4 **268.128 Legal representation**

5 The provisions of section 12 (other than subsection 12(2)) of the
6 *Geneva Conventions Act 1957* apply in relation to the trial of a
7 person for an offence against this Division in the same way as they
8 apply in relation to the trial of a protected prisoner of war.

9 **268.129 Proof of application of Geneva Conventions or Protocol I to**
10 **the Geneva Conventions**

11 If, in proceedings under this Division in respect of a grave breach
12 of any of the Geneva Conventions or of Protocol I to the Geneva
13 Conventions, a question arises under:

- 14 (a) Article 2 of the Geneva Convention concerned (which relates
15 to the circumstances in which the Convention applies); or
16 (b) Article 1 of that Protocol (which relates to the circumstances
17 in which the Protocol applies);

18 a certificate under the hand of the Minister for Foreign Affairs
19 certifying to any matter relevant to that question is prima facie
20 evidence of the matter so certified.

21 **3 The Schedule (the Dictionary in the *Criminal Code*)**

22 Insert:

23 *attack directed against a civilian population* means a course of
24 conduct involving the multiple commission of any one or more
25 proscribed inhumane acts against any civilian population pursuant
26 to, or in furtherance of, a state or organisational policy to engage in
27 that course of conduct.

28 **4 The Schedule (the Dictionary in the *Criminal Code*)**

29 Insert:

30 *benefit* includes any advantage and is not limited to property.

31 **5 The Schedule (the Dictionary in the *Criminal Code*)**

1 Insert:

2 *crime against humanity* means an offence under Subdivision C of
3 Division 268.

4 **6 The Schedule (the Dictionary in the *Criminal Code*)**

5 Insert:

6 *crime against the administration of the justice of the*
7 *International Criminal Court* means an offence under Subdivision
8 J of Division 268.

9 **7 The Schedule (the Dictionary in the *Criminal Code*)**

10 Insert:

11 *detriment* includes any disadvantage and is not limited to personal
12 injury or to loss of or damage to property.

13 **8 The Schedule (the Dictionary in the *Criminal Code*)**

14 Insert:

15 *distinctive emblems of the Geneva Conventions* means the
16 emblems, identity cards, signs, signals, insignia or uniforms to
17 which subsection 15(1) of the *Geneva Conventions Act 1957*
18 applies.

19 **9 The Schedule (the Dictionary in the *Criminal Code*)**

20 Insert:

21 *evidence* includes anything that may be used as evidence.

22 **10 The Schedule (the Dictionary in the *Criminal Code*)**

23 Insert:

24 *First Geneva Convention* means the Geneva Convention for the
25 Amelioration of the Condition of the Wounded and Sick in Armed
26 Forces in the Field, adopted at Geneva on 12 August 1949, a copy
27 of the English text of which (not including the annexes) is set out
28 in Schedule 1 to the *Geneva Conventions Act 1957*.

1 **11 The Schedule (the Dictionary in the *Criminal Code*)**

2 Insert:

3 *Fourth Geneva Convention* means the Geneva Convention
4 relative to the Protection of Civilian Persons in Time of War,
5 adopted at Geneva on 12 August 1949, a copy of the English text
6 of which (not including the annexes) is set out in Schedule 4 to the
7 *Geneva Conventions Act 1957*.

8 **12 The Schedule (the Dictionary in the *Criminal Code*)**

9 Insert:

10 *Geneva Conventions* means the First Geneva Convention, the
11 Second Geneva Convention, the Third Geneva Convention and the
12 Fourth Geneva Convention.

13 **13 The Schedule (the Dictionary in the *Criminal Code*)**

14 Insert:

15 *genocide* means an offence under Subdivision B of Division 268.

16 **14 The Schedule (the Dictionary in the *Criminal Code*)**

17 Insert:

18 *ICC Statute* means the Statute of the International Criminal Court
19 done at Rome on 17 July 1998, a copy of the English text of which
20 is set out in Schedule 1 to the *International Criminal Court Act*
21 *2001*.

22 **15 The Schedule (the Dictionary in the *Criminal Code*)**

23 Insert:

24 *international armed conflict* includes a military occupation.

25 **16 The Schedule (the Dictionary in the *Criminal Code*)**

26 Insert:

27 *International Criminal Court* means the International Criminal
28 Court established under the ICC Statute.

1 **17 The Schedule (the Dictionary in the *Criminal Code*)**

2 Insert:

3 *interpreter* includes a person who interprets, signs or other things
4 made or done by a person who cannot speak adequately for the
5 purpose of giving evidence in a proceeding before the International
6 Criminal Court.

7 **18 The Schedule (the Dictionary in the *Criminal Code*)**

8 Insert:

9 *proscribed inhumane act* means any of the following acts:

- 10 (a) an act that is described in paragraph 268.7(1)(a);
11 (b) an act that is described in paragraph 268.8(1)(a) and is
12 committed as mentioned in paragraph 268.8(1)(b);
13 (c) an act that is described in paragraph 268.9(1)(a);
14 (d) an act that is described in paragraph 268.10(1)(a);
15 (e) an act that is described in paragraph 268.11(1)(a) and is
16 committed as mentioned in paragraph 268.11(1)(c);
17 (f) an act that is described in paragraph 268.12(1)(a) and to
18 which paragraph 268.12(1)(b) applies;
19 (g) an act that is described in paragraph 268.13(1)(a);
20 (h) an act that is described in paragraph 268.14(1)(a);
21 (i) an act that is described in paragraph 268.15(1)(a) and to
22 which paragraph 268.15(1)(b) applies;
23 (j) an act that is described in paragraph 268.16(1)(a);
24 (k) an act that is described in paragraph 268.17(1)(a) and to
25 which paragraphs 268.17(1)(b) and (c) apply;
26 (l) an act that is described in paragraph 268.18(1)(a) and is of
27 the gravity mentioned in paragraph 268.18(1)(b);
28 (m) an act that is described in paragraph 268.19(1)(a) and is
29 committed as mentioned in paragraphs 268.19(1)(b), (c) and
30 (d);
31 (n) an act that is described in paragraph 268.20(1)(a) and to
32 which paragraph 268.20(1)(b) applies;
33 (o) an act that is described in paragraph 268.20(2)(c) and is
34 committed as mentioned in paragraph 268.20(2)(d);

- 1 (p) an act that is described in paragraph 268.21(1)(a) and is
2 committed as mentioned in paragraph 268.21(1)(b);
3 (q) an act that is described in paragraph 268.22(1)(a) and to
4 which paragraph 268.22(1)(b) applies.

5 **19 The Schedule (the Dictionary in the *Criminal Code*)**

6 Insert:

7 *Protocol I to the Geneva Conventions* means the Protocol
8 Additional to the Geneva Conventions of 12 August 1949, and
9 relating to the Protection of Victims of International Armed
10 Conflicts (Protocol I), done at Geneva on 10 June 1997, a copy of
11 the English text of which is set out in Schedule 5 to the *Geneva*
12 *Conventions Act 1957*.

13 **20 The Schedule (the Dictionary in the *Criminal Code*)**

14 Insert:

15 *Second Geneva Convention* means the Geneva Convention for the
16 Amelioration of the Condition of the Wounded and Sick and
17 Shipwrecked Members of Armed Forces at Sea, adopted at Geneva
18 on 12 August 1949, a copy of the English text of which (not
19 including the annexes) is set out in Schedule 2 to the *Geneva*
20 *Conventions Act 1957*.

21 **21 The Schedule (the Dictionary in the *Criminal Code*)**

22 Insert:

23 *sworn statement* means an oral statement made on oath or
24 affirmation or a statement in a document verified on oath or
25 affirmation.

26 **22 The Schedule (the Dictionary in the *Criminal Code*)**

27 Insert:

28 *Third Geneva Convention* means the Geneva Convention relative
29 to the Protection of Prisoners of War, adopted at Geneva on
30 12 August 1949, a copy of the English text of which (not including
31 the annexes) is set out in Schedule 3 to the *Geneva Conventions*
32 *Act 1957*.

1 **23 The Schedule (the Dictionary in the *Criminal Code*)**

2 Insert:

3 *threat* includes a threat made by any conduct, whether explicit or
4 implicit and whether conditional or unconditional.

5 **24 The Schedule (the Dictionary in the *Criminal Code*)**

6 Insert:

7 *war crime* means an offence under Subdivision D, E, F, G or H of
8 Division 268.

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**Schedule 2—Amendment of the Director of
Public Prosecutions Act 1983**

1 Paragraph 6(1)(k)

*After “International War Crimes Tribunals Act 1995”, insert “, the
International Criminal Court Act 2001”.*

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Schedule 3—Amendment of the Geneva Conventions Act 1957

1 Part II

Repeal the Part.

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Schedule 4—Amendment of the Migration Act 1958

1 After subparagraph 145(a)(ia)

Insert:

(ib) the *International Criminal Court Act 2001*; or

2 After subparagraph 147(b)(ia)

Insert:

(ib) the *International Criminal Court Act 2001*; or

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Schedule 5—Amendment of the Mutual Assistance in Criminal Matters Act 1987

1 Subsection 37A(1)

After “foreign country”, insert “or the International Criminal Court”.

2 Subsection 37A(2)

Insert:

International Criminal Court has the same meaning as in the *International Criminal Court Act 2001*.

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Schedule 6—Amendment of the Proceeds of Crime Act 1987

1 At the end of subsection 3(2)

Add:
; and (d) facilitating the enforcement in Australia, pursuant to the *International Criminal Court Act 2001*, of ICC forfeiture orders.

2 Subsection 4(1) (after the definition of *GBE*)

Insert:
ICC forfeiture order means a forfeiture order within the meaning of the *International Criminal Court Act 2001*.

3 After Division 2A of Part II

Insert:

Division 2B—Registered ICC forfeiture orders

23B Application of Division

This Division applies if an ICC forfeiture order is registered in a court in Australia under section 148 of the *International Criminal Court Act 2001*.

23C Effect and enforcement of ICC forfeiture orders

- (1) The ICC forfeiture order has effect, and may be enforced, as if it were a forfeiture order made by the court under this Act at the time of registration.
- (2) Division 2 applies in relation to the ICC forfeiture order as if section 19, paragraph 20(2A)(b), subsections 20(3) to (6) and sections 21 and 22 were omitted.

1 **23D Disposal of property**

2 The property to which the ICC forfeiture order relates may, subject
3 to section 23E, be disposed of, or otherwise dealt with, in
4 accordance with any direction of the Attorney-General or of a
5 person authorised in writing by the Attorney-General for the
6 purposes of this section.

7 **23E Effect on third parties of registration of ICC forfeiture order**

- 8 (1) On registering the ICC forfeiture order, the Court must direct the
9 DPP to give or publish notice of the registration:
- 10 (a) to specified persons (other than a person convicted of an
11 offence in respect of which the order was made) who the
12 court has reason to believe may have an interest in the
13 property; and
14 (b) in the manner and within the period that the court considers
15 appropriate.
- 16 (2) A person (other than a person convicted of an offence in respect of
17 which the ICC forfeiture order was made) who claims an interest in
18 the property may apply to the court for an order under
19 subsection (6).
- 20 (3) A person who was given notice of, or appeared at, the hearing held
21 in connection with the making of the ICC forfeiture order is not
22 entitled, except with the leave of the court, to apply under
23 subsection (2).
- 24 (4) The court may grant leave under subsection (3) if it is satisfied that
25 there are special grounds for doing so.
- 26 (5) Without limiting the generality of subsection (4), the court may
27 grant a person leave under subsection (3) if it is satisfied that:
- 28 (a) the person, for a good reason, did not attend the hearing
29 referred to in subsection (3) although the person had notice of
30 the hearing; or
31 (b) particular evidence that the person proposes to adduce in
32 connection with the proposed application under
33 subsection (2) was not available to the person at the time of
34 the hearing referred to in subsection (3).

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- 1 (6) If, on an application for an order under this subsection, the court is
2 satisfied that:
- 3 (a) the applicant was not, in any way, involved in the
4 commission of an offence in respect of which the ICC
5 forfeiture order was made; and
- 6 (b) if the applicant acquired his, her or its interest in the property
7 at the time of or after the commission of such an offence—
8 the applicant acquired the interest:
- 9 (i) for sufficient consideration; and
10 (ii) without knowing, and in circumstances such as not to
11 arouse a reasonable suspicion, that the property was, at
12 the time of the acquisition, tainted property in relation to
13 the offence;
- 14 the court must make an order:
- 15 (c) declaring the nature, extent and value (as at the time when
16 the order is made) of the applicant's interest in the property;
17 and
- 18 (d) either:
- 19 (i) directing the Commonwealth to transfer the interest to
20 the applicant; or
- 21 (ii) declaring that there is payable by the Commonwealth to
22 the applicant an amount equal to the value declared
23 under paragraph (c).
- 24 (7) Subject to subsection (8), an application under subsection (2) must
25 be made before the end of 6 weeks beginning on the day when the
26 ICC forfeiture order is registered in the court.
- 27 (8) The court may grant a person leave to apply under subsection (2)
28 after the end of the period referred to in subsection (7) if the court
29 is satisfied that the person's failure to apply within that period was
30 not due to any neglect on the person's part.
- 31 (9) A person who applies under subsection (2) must give to the DPP
32 and the Minister notice, as prescribed, of the application.
- 33 (10) The DPP is to be a party to proceedings on an application under
34 subsection (2) and the Minister may intervene in such proceedings.

1 **23F Forfeiture may be treated as pecuniary penalty order**

2 (1) This section applies if the Attorney-General is unable to give effect
3 to an ICC forfeiture order.

4 (2) The Attorney-General must take measures to recover:

5 (a) the value specified by the International Criminal Court to be
6 the value of the property ordered by that Court to be
7 forfeited; or

8 (b) if the International Criminal Court has not specified the value
9 of the property ordered by that Court to be forfeited—the
10 value that, in the Attorney-General’s opinion, is the value of
11 that property.

12 (3) The ICC forfeiture order is taken, for the purposes of this Act, to
13 be a pecuniary penalty order for an amount equal to the value
14 referred to in subsection (2) and may be enforced as if it were a
15 pecuniary penalty order made by the court in which the ICC
16 forfeiture order was registered.

17 **4 Paragraph 34(b)**

18 After “23A(7)(d)(i)”, insert “, 23E(6)(d)(i)”.

19 **5 After paragraph 34B(1)(d)**

20 Insert:

21 (da) money (including the proceeds of sale of any property) that
22 is, under a direction referred to in section 23D, directed to be
23 paid into the Reserve; and

24 **6 After subparagraph 34C(1)(a)(ii)**

25 Insert:

26 (iia) making such payments as the Attorney-General
27 considers necessary to satisfy the Commonwealth’s
28 obligations in respect of a registered ICC forfeiture
29 order; and

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**Schedule 7—Amendment of the
Telecommunications (Interception) Act
1979**

1 After paragraph 5B(h)

Insert:

- (ha) a proceeding under Division 5 of Part 4 of the *International Criminal Court Act 2001*; or
- (hb) a proceeding before the International Criminal Court sitting in Australia under Part 5 of the *International Criminal Court Act 2001*; or

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Schedule 8—Amendment of the Witness Protection Act 1994

1 Section 3 (paragraph (d) of the definition of *Commonwealth participant*)

After “10”, insert “or 10A”.

2 After section 10

Insert:

10A Inclusion of persons in NWPP at the request of International Criminal Court

- (1) If:
 - (a) the Minister receives a request from the International Criminal Court for the inclusion of a person (the *nominated person*) in the NWPP; and
 - (b) the Minister is satisfied that:
 - (i) the Court has provided all material that is necessary to support the request; and
 - (ii) it is appropriate to do so in all the circumstances;the Minister is to refer the request to the Commissioner.
- (2) The Commissioner is to consider including the nominated person in the NWPP in the same way as the Commissioner would consider including another person in the NWPP.
- (3) The Commissioner may, if he or she thinks it appropriate to do so, seek further information about the nominated person from the Court.
- (4) If:
 - (a) the Commissioner decides that the nominated person is suitable for inclusion in the NWPP; and
 - (b) the Minister, after considering a report from the Commissioner recommending the inclusion of the person in the NWPP, has decided that it is appropriate in all the circumstances that the person be included in the NWPP; and

1 (c) the Commissioner has entered into an arrangement with the
2 Court for the purpose of making services under the NWPP
3 available to the Court; and

4 (d) if the person is not an Australian citizen—the nominated
5 person has been granted a visa for entry to Australia;
6 the Commissioner is to include the nominated person in the
7 NWPP.

8 (5) An arrangement referred to in paragraph (4)(c) must include
9 procedures under which the Court pays the costs associated with
10 providing protection for the nominated person and any associated
11 persons, including:

12 (a) the costs of travel by those persons and the costs of
13 associated travel by members; and

14 (b) any costs that will be incurred if protection and assistance
15 under the NWPP to the nominated person is terminated; and

16 (c) such other costs as the Commissioner determines.

17 (6) In this section:

18 *International Criminal Court* has the same meaning as in the
19 *International Criminal Court Act 2001*.

20 **3 Paragraph 18(6)(b)**

21 After “10”, insert “or 10A”.