

**International Criminal Court  
Assembly of States Parties**

**Implementing legislation questionnaire for States Parties  
Secretariat Note Verbale ICC-ASP/16/SP/45, 17 August 2017**

**Australian Government response  
8 November 2017**

**1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?**

Yes. The *International Criminal Court Act 2002* (Cth) (ICC Act) establishes mechanisms which allow Australia to assist the International Criminal Court (ICC) in accordance with the Rome Statute.

Additionally, the Australian Government has comprehensively criminalised genocide, crimes against humanity and war crimes in Division 268 of the Criminal Code, Schedule to the *Criminal Code Act 1995* (Cth). The Criminal Code also criminalises a range of conduct that interferes with the administration of justice of the ICC. Through this legislation, Australia is able to prosecute any person accused of a Rome Statute crime under Australian law consistent with the principle of complementarity.

Other relevant legislation includes the *Geneva Conventions Act 1957* (Cth), *Crimes (Hostages) Act 1989* (Cth) and *War Crimes Act 1945* (Cth).

**Part B**

**5. In implementing the Statute, did your Government draft a stand-alone legislation or did it incorporate the articles or substantive provisions into pre-existing law?**

The stand-alone ICC Act establishes mechanisms which allow Australia to assist the ICC in accordance with the Rome Statute. The ICC Act covers matters such as requests for cooperation, for arrest and surrender of persons, investigations or sittings of the ICC in Australia, powers of arrest, information exchange and proceeds of crimes and enforcement of ICC fines and orders.

The Australian Government also incorporated the offences of genocide, crimes against humanity and war crimes into Commonwealth criminal law (Division 268 of the Criminal Code).

**6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?**

Division 268 of the Criminal Code incorporates the crimes of genocide, crimes against humanity, war crimes and crimes against the administration of the justice of the ICC into domestic criminal law.

**7. Does the implementing legislation incorporate the following aspects of cooperation with the court and if yes, how?**

**(a) Arrest and surrender;**

Yes. Under Part 3 of the ICC Act the Australian Attorney-General has powers in relation to responding to an ICC request for the arrest and surrender of a person.

Part 3, Division 2 sets out the documentation required to consider an ICC request for arrest and surrender, and Division 3 sets out the circumstances in which the Attorney-General may direct a court to issue an arrest warrant for that person, amongst other matters. Under subsection 23(2) a person so arrested must as soon as practicable be brought before a magistrate to determine if they are the person to whom the warrant applies, and that they have been arrested in accordance with the ICC Act.

The Australian Government's powers and obligations in relation to an ICC request to surrender a person are prescribed under Part 3, Division 4.

**(b) Interim release and release of persons (acquittal, non-confirmation or charges, etc.);**

Section 23 of the ICC Act allows a person to apply to a magistrate for bail pending the issuing of a surrender warrant. Section 24 details how the ICC: must be informed of such an application; may provide recommendations which the magistrate must consider; and may be provided with periodic reports on the person's bail status.

Sections 25 and 26 of the ICC Act allow a person to be released from remand on the Attorney-General's discretion or after certain periods, respectively.

Section 45 of the ICC Act provides that if a person is in custody in Australia under a surrender warrant for more than 21 days after the day the warrant was to be executed, the person can apply to specified courts to be released from custody, subject to certain conditions.

**(c) Cooperation with OTP investigations;**

The ICC Act establishes mechanisms which allow Australia to assist the ICC in accordance with the Rome Statute. For the purposes of the Act, the ICC is defined so as to include any organs of the ICC within the meaning of the Rome Statute, which includes the Office of the Prosecutor (OTP) of the ICC.

**(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;**

Part 4, Division 14 of the ICC Act applies to ICC requests for cooperation relating to the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes. Under this Division, the Attorney-General may assist with such a request by authorising action to be taken under Australian domestic proceeds of crime and other relevant laws to give effect to the ICC's request.

**(e) Enforcement of sentences;**

Part 12 of the ICC Act provides that Australia may agree to act as the State of enforcement of sentences for ICC prisoners, subject to conditions.

**(f) Witness protection;**

Division 268 – Subdivision J of the Criminal Code creates offences of conduct that impedes the administration of justice of the ICC, including in relation to witnesses. Offences include: deceiving witnesses (section 268.105), corrupting witnesses or interpreters (section 268.106), threatening witnesses or interpreters (section 268.107), preventing witnesses or interpreters from attending the proceedings (section 268.108), and undertaking reprisal action against witnesses for their role in the proceedings (section 268.110). Penalties ranging between up to five and seven years' imprisonment apply to these offences.

Section 80 of the ICC Act provides that the Attorney-General may execute an ICC request for witness protection if the request relates to a current investigation or a proceeding before the ICC and the assistance sought is not prohibited by Australian law.

**(g) Other forms of cooperation (see in particular article 93 of the Rome Statute).**

Section 7 of the ICC Act lists the forms of cooperation which Australia can provide, which mirrors the list at article 93 of the Rome Statute.

**8. Does the implementing legislation designate a channel of communication with the Court?**

Yes, section 8 of the ICC Act provides that a request for cooperation is to be made in writing to the Attorney-General or a person to whom the Attorney-General has delegated a power to deal with the request, through the diplomatic channel. Alternatively, the request can be made through the International Criminal Police Organisation or any other appropriate regional organisation.

In the case of an urgent request or request for provisional arrest, the request can be made by using any medium capable of delivering a written record (section 9) but must be followed by a formal request (in accordance with section 8).

**9. Does the implementing legislation create a central national authority or designate a national focus point for cooperation with the Court?**

Yes, the Attorney-General or the delegate of the Attorney-General (section 8 of the ICC Act).

**10. Does the implementing legislation provide for the privileges and immunities of the Court? (See in particular article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court)**

Section 9C of the *International Organisations (Privileges and Immunities) Act 1963* (Cth) enables the enactment of regulations to confer privileges and immunities upon the ICC and all persons referred to in the Agreement on Privileges and Immunities of the ICC. This would include persons covered by Article 48 of the Rome Statute. These regulations are currently being finalised.

**11. What obstacles, if any, did your Government face in its efforts to implement the provisions of the Statute? How did your Government manage to overcome such obstacles?**

The ICC Act came into effect in 2002. There were no challenges that impeded the implementation of that Act.

**12. Did your Government benefit from any form of assistance in the process of implementing the Statute?**

No.

**13. Has your government initiated or considered additional steps for the implementation of the Statute in national legislation?**

The Australian Government has not ratified the amendments to the Rome Statute pertaining to war crimes, adopted at the Review Conference of the Rome Statute held in Kampala, Uganda, from 31 May to 11 June 2010. The Government is currently considering ratification of these amendments. As part of this process, the Government will consider implementation through domestic legislation.

See also the response to Question 10 above, in relation to implementing Article 48 of the Rome Statute.