

International Criminal Court (Consequential Amendments) Act 2002

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

268.24 War crime—wilful killing

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator causes the death of one or more persons; and
 - (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) Strict liability applies to paragraph (1)(b).

268.25 War crime—torture

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
 - (b) the perpetrator inflicts the pain or suffering for the purpose of:
 - (i) obtaining information or a confession; or
 - (ii) a punishment, intimidation or coercion; or
 - (iii) a reason based on discrimination of any kind; and
 - (c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(c).

268.26 War crime—inhumane treatment

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and

- (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
- (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).

268.27 War crime—biological experiments

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to a particular biological experiment; and
 - (b) the experiment seriously endangers the physical or mental health or integrity of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(d).

268.28 War crime—wilfully causing great suffering

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator causes great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons; and
 - (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).

268.29 War crime—destruction and appropriation of property

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator destroys or appropriates property; and
 - (b) the destruction or appropriation is not justified by military necessity; and
 - (c) the destruction or appropriation is extensive and carried out unlawfully and wantonly; and
 - (d) the property is protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and
 - (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

- (2) Strict liability applies to paragraph (1)(d).

268.30 War crime—compelling service in hostile forces

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator coerces one or more persons, by act or threat:
 - (i) to take part in military operations against that person's or those persons' own country or forces; or
 - (ii) otherwise to serve in the forces of an adverse power; and
 - (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

- (2) Strict liability applies to paragraph (1)(b).

268.31 War crime—denying a fair trial

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator deprives one or more persons of a fair and regular trial by denying to the person any of the judicial guarantees referred to in paragraph (b); and
 - (b) the judicial guarantees are those defined in articles 84, 99 and 105 of the Third Geneva Convention and articles 66 and 71 of the Fourth Geneva Convention; and
 - (c) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and

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

Penalty: Imprisonment for 10 years.

- (2) Strict liability applies to:
 - (a) the physical element of the offence referred to in paragraph (1)(a) that the judicial guarantees are those referred to in paragraph (1)(b); and
 - (b) paragraphs (1)(b) and (c).

268.32 War crime—unlawful deportation or transfer

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator unlawfully deports or transfers one or more persons to another country or to another location; and
 - (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) Strict liability applies to paragraph (1)(b).

268.33 War crime—unlawful confinement

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator unlawfully confines or continues to confine one or more persons to a certain location; and
 - (b) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) Strict liability applies to paragraph (1)(b).

268.34 War crime—taking hostages

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

- (c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and
- (d) the person or persons are protected under one or more of the Geneva Conventions or under Protocol I to the Geneva Conventions; and
- (e) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are so protected; and
- (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) Strict liability applies to paragraph (1)(d).

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

268.35 War crime—attacking civilians

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

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

Penalty: Imprisonment for life.

268.36 War crime—attacking civilian objects

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is not a military objective; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.37 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator directs an attack; and
 - (b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
 - (c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol I to the Geneva Conventions; and

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

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator directs an attack; and
 - (b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
 - (c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions or Protocol I to the Geneva Conventions; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c).

268.38 War crime—excessive incidental death, injury or damage

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator launches an attack; and
 - (b) the perpetrator knows that the attack will cause incidental death or injury to civilians; and
 - (c) the perpetrator knows that the death or injury will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator launches an attack; and
 - (b) the perpetrator knows that the attack will cause:
 - (i) damage to civilian objects; or
 - (ii) widespread, long-term and severe damage to the natural environment; and
 - (c) the perpetrator knows that the damage will be of such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 20 years.

268.39 War crime—attacking undefended places

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

- (a) the perpetrator attacks or bombards one or more towns, villages, dwellings or buildings; and
- (b) the towns, villages, dwellings or buildings are open for unresisted occupation; and
- (c) the towns, villages, dwellings or buildings do not constitute military objectives; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.40 War crime—killing or injuring a person who is hors de combat

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator kills one or more persons; and
 - (b) the person or persons are *hors de combat*; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator injures one or more persons; and
 - (b) the person or persons are *hors de combat*; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the person or persons are *hors de combat*; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.41 War crime—improper use of a flag of truce

- A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator uses a flag of truce; and
 - (b) the perpetrator uses the flag in order to feign an intention to negotiate when there is no such intention on the part of the perpetrator; and
 - (c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag; and
 - (d) the perpetrator's conduct results in death or serious personal injury; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.42 War crime—improper use of a flag, insignia or uniform of the adverse party

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

- (a) the perpetrator uses a flag, insignia or uniform of the adverse party; and
- (b) the perpetrator uses the flag, insignia or uniform while engaged in an attack or in order to shield, favour, protect or impede military operations; and
- (c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and
- (d) the perpetrator's conduct results in death or serious personal injury; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.43 War crime—improper use of a flag, insignia or uniform of the United Nations

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

- (a) the perpetrator uses a flag, insignia or uniform of the United Nations; and
- (b) the perpetrator uses the flag, insignia or uniform without the authority of the United Nations; and
- (c) the perpetrator knows of, or is reckless as to, the illegal nature of such use of the flag, insignia or uniform; and
- (d) the perpetrator's conduct results in death or serious personal injury; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.44 War crime—improper use of the distinctive emblems of the Geneva Conventions

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

- (a) the perpetrator uses an emblem; and
- (b) the emblem is one of the distinctive emblems of the Geneva Conventions; and
- (c) the perpetrator uses the emblem for combatant purposes to invite the confidence of an adversary in order to lead him or her to believe that the perpetrator is entitled to protection, or that the adversary is obliged to accord protection to the perpetrator, with intent to betray that confidence; and
- (d) the perpetrator knows of, or is reckless as to, the illegal nature of such use; and
- (e) the perpetrator's conduct results in death or serious personal injury; and
- (f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

(2) Strict liability applies to paragraph (1)(b).

(3) In this section:

emblem means any emblem, identity card, sign, signal, insignia or uniform.

268.45 War crime—transfer of population

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

- (a) the perpetrator:
 - (i) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the transfer, directly or indirectly, of parts of the civilian population of the perpetrator's own country into territory that the country occupies; or
 - (ii) authorises, organises or directs, or participates in the authorisation, organisation or direction of, or participates in, the deportation or transfer of all or parts of the population of territory occupied by the perpetrator's own country within or outside that territory; and
- (b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.46 War crime—attacking protected objects

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is any one or more of the following that are not military objectives:
 - (i) buildings dedicated to religion, education, art, science or charitable purposes;
 - (ii) historic monuments;
 - (iii) hospitals or places where the sick and wounded are collected; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

268.47 War crime—mutilation

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

- (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
- (b) the perpetrator's conduct causes the death of the person or persons; and
- (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
- (d) the person or persons are in the power of an adverse party; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.48 War crime—medical or scientific experiments

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
 - (b) the experiment causes the death of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
 - (b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of an adverse party; and
 - (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.49 War crime—treacherously killing or injuring

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

- (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
- (b) the perpetrator kills the person or persons; and
- (c) the perpetrator makes use of that confidence or belief in killing the person or persons; and
- (d) the person or persons belong to an adverse party; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
 - (b) the perpetrator injures the person or persons; and
 - (c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and
 - (d) the person or persons belong to an adverse party; and
 - (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.50 War crime—denying quarter

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

- (a) the perpetrator declares or orders that there are to be no survivors; and
- (b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and
- (c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.51 War crime—destroying or seizing the enemy's property

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator destroys or seizes certain property; and
 - (b) the property is property of an adverse party; and
 - (c) the property is protected from the destruction or seizure under article 18 of the Third Geneva Convention, article 53 of the Fourth Geneva Convention or article 54 of Protocol I to the Geneva Conventions; and
 - (d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and

- (e) the destruction or seizure is not justified by military necessity; and
- (f) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

- (2) Strict liability applies to paragraph (1)(c).

268.52 War crime—depriving nationals of the adverse power of rights or actions

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

- (a) the perpetrator effects the abolition, suspension or termination of admissibility in a court of law of certain rights or actions; and
- (b) the abolition, suspension or termination is directed at the nationals of an adverse party; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

268.53 War crime—compelling participation in military operations

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

- (a) the perpetrator coerces one or more persons by act or threat to take part in military operations against that person's or those persons' own country or forces; and
- (b) the person or persons are nationals of an adverse party; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years.

- (2) It is not a defence to a prosecution for an offence against subsection (1) that the person or persons were in the service of the perpetrator at a time before the beginning of the international armed conflict.

268.54 War crime—pillaging

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

- (a) the perpetrator appropriates certain property; and
- (b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and
- (c) the appropriation is without the consent of the owner; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

268.55 War crime—employing poison or poisoned weapons

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

- (a) the perpetrator employs a substance or employs a weapon that releases a substance as a result of its employment; and
- (b) the substance is such that it causes death or serious damage to health in the ordinary course of events through its toxic properties; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.56 War crime—employing prohibited gases, liquids, materials or devices

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

- (a) the perpetrator employs a gas or other analogous substance or device; and
- (b) the gas, substance or device is such that it causes death or serious damage to health in the ordinary course of events through its asphyxiating or toxic properties; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.57 War crime—employing prohibited bullets

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

- (a) the perpetrator employs certain bullets; and
- (b) the bullets are such that their use violates the Hague Declaration because they expand or flatten easily in the human body; and
- (c) the perpetrator knows that, or is reckless as to whether, the nature of the bullets is such that their employment will uselessly aggravate suffering or the wounding effect; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

(2) Strict liability applies to paragraph (1)(b).

268.58 War crime—outrages upon personal dignity

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

- (a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and
- (b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and
 - (b) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.59 War crime—rape

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator sexually penetrates another person without the consent of that person; and
 - (b) the perpetrator knows about, or is reckless as to, the lack of consent; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and
 - (b) the perpetrator knows about, or is reckless as to, the lack of consent; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

- (4) In this section:

sexually penetrate means:

- (a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

- (b) penetrate (to any extent) the mouth of a person by the penis of another person;
or
 - (c) continue to sexually penetrate as defined in paragraph (a) or (b).
- (5) In this section, being *reckless* as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.
- (6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.60 War crime—sexual slavery

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes another person to enter into or remain in sexual slavery;
and
 - (b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) For the purposes of this section, *sexual slavery* is the condition of a person who provides sexual services and who, because of the use of force or threats:
- (a) is not free to cease providing sexual services; or
 - (b) is not free to leave the place or area where the person provides sexual services.
- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

threat means:

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

268.61 War crime—enforced prostitution

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and
 - (b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

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

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

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) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.62 War crime—forced pregnancy

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
 - (b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was effected by deception or by natural, induced or age-related incapacity.

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

268.63 War crime—enforced sterilisation

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator deprives one or more persons of biological reproductive capacity; and
 - (b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and
 - (c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

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

268.64 War crime—sexual violence

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator does either of the following:
 - (i) commits an act or acts of a sexual nature against one or more persons;
 - (ii) causes one or more persons to engage in an act or acts of a sexual nature; without the consent of the person or persons, including by being reckless as to whether there is consent; and
 - (b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.59 to 268.63; and
 - (c) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).

- (3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

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.
- (4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.65 War crime—using protected persons as shields

- (1) A person (the ***perpetrator***) commits an offence if:
- (a) the perpetrator uses the presence of one or more civilians, prisoners of war, military, medical or religious personnel or persons who are *hors de combat*; and
 - (b) the perpetrator intends the perpetrator's conduct to render a military objective immune from attack or to shield, favour or impede military operations; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty:

- (a) if the conduct results in the death of any of the persons referred to in paragraph (a)—imprisonment for life; or
 - (b) otherwise—imprisonment for 17 years.
- (2) In this section:

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

268.66 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

- (1) A person (the ***perpetrator***) commits an offence if:
- (a) the perpetrator attacks one or more persons; and
 - (b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
 - (c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and
- (b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
- (c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.

- (3) Strict liability applies to paragraphs (1)(b) and (2)(b).

268.67 War crime—starvation as a method of warfare

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator uses as a method of warfare:
 - (i) any intentional deprivation of civilians of objects indispensable to their survival; or
 - (ii) without limiting subparagraph (i)—the wilful impeding of relief supplies for civilians; and
 - (b) if subparagraph (a)(ii) applies—the relief supplies are provided for under the Geneva Conventions; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).

268.68 War crime—using, conscripting or enlisting children

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator uses one or more persons to participate actively in hostilities; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator conscripts one or more persons into the national armed forces; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years.

- (3) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator enlists one or more persons into the national armed forces; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

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

268.69 Definition of religious personnel

In this Subdivision:

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

268.70 War crime—murder

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator causes the death of one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.71 War crime—mutilation

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct causes the death of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are not taking an active part in the hostilities; and

- (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
- (f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are not taking an active part in the hostilities; and
 - (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (f) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (3) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.72 War crime—cruel treatment

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or

- (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.73 War crime—torture

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons; and
 - (b) the perpetrator inflicts the pain or suffering for the purpose of:
 - (i) obtaining information or a confession; or
 - (ii) a punishment, intimidation or coercion; or
 - (iii) a reason based on discrimination of any kind; and
 - (c) the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.74 War crime—outrages upon personal dignity

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator severely humiliates, degrades or otherwise violates the dignity of the body or bodies of one or more dead persons; and
 - (b) the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and

- (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the dead person or dead persons were not, before his, her or their death, taking an active part in the hostilities; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

- (3) To avoid doubt, a reference in this section to a person or persons who are not, or a dead person or dead persons who were not before his, her or their death, taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who:
 - (i) are *hors de combat*; or
 - (ii) are civilians, medical personnel or religious personnel who are not taking an active part in the hostilities; or
 - (b) a dead person or dead persons who, before his, her or their death:
 - (i) were *hors de combat*; or
 - (ii) were civilians, medical personnel or religious personnel who were not taking an active part in the hostilities;
- as the case may be.

268.75 War crime—taking hostages

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator seizes, detains or otherwise holds hostage one or more persons; and
 - (b) the perpetrator threatens to kill, injure or continue to detain the person or persons; and
 - (c) the perpetrator intends to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for either the safety or the release of the person or persons; and
 - (d) the person or persons are not taking an active part in the hostilities; and
 - (e) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) To avoid doubt, a reference in subsection (1) to a person or persons who are not taking an active part in the hostilities includes a reference to:
 - (a) a person or persons who are *hors de combat*; or
 - (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

268.76 War crime—sentencing or execution without due process

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator passes a sentence on one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) either of the following applies:
 - (i) there was no previous judgment pronounced by a court;
 - (ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and
 - (e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and
 - (f) the perpetrator knows of:
 - (i) if subparagraph (d)(i) applies—the absence of a previous judgment; or
 - (ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and
 - (g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator executes one or more persons; and
 - (b) the person or persons are not taking an active part in the hostilities; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances establishing that the person or persons are not taking an active part in the hostilities; and
 - (d) either of the following applies:
 - (i) there was no previous judgment pronounced by a court;
 - (ii) the court that rendered judgment did not afford the essential guarantees of independence and impartiality or other judicial guarantees; and
 - (e) if the court did not afford other judicial guarantees—those guarantees are guarantees set out in articles 14, 15 and 16 of the Covenant; and
 - (f) the perpetrator knows of:
 - (i) if subparagraph (d)(i) applies—the absence of a previous judgment; or
 - (ii) if subparagraph (d)(ii) applies—the failure to afford the relevant guarantees and the fact that they are indispensable to a fair trial; and
 - (g) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (3) Strict liability applies to paragraphs (1)(e) and (2)(e).
- (4) To avoid doubt, a reference in subsection (1) or (2) to a person or persons who are not taking an active part in the hostilities includes a reference to:

- (a) a person or persons who are *hors de combat*; or
- (b) civilians, medical personnel or religious personnel who are not taking an active part in the hostilities.

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

268.77 War crime—attacking civilians

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

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

Penalty: Imprisonment for life.

268.78 War crime—attacking persons or objects using the distinctive emblems of the Geneva Conventions

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

- (a) the perpetrator attacks one or more persons; and
- (b) the person or persons are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
- (c) the perpetrator intends the persons so using such an emblem to be the object of the attack; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator attacks one or more buildings, medical units or transports or other objects; and
- (b) the buildings, units or transports or other objects are using, in conformity with the Geneva Conventions or the Protocols to the Geneva Conventions, any of the distinctive emblems of the Geneva Conventions; and
- (c) the perpetrator intends the buildings, units or transports or other objects so using such an emblem to be the object of the attack; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

(3) Strict liability applies to paragraphs (1)(b) and (2)(b).

268.79 War crime—attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator directs an attack; and
 - (b) the object of the attack is personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
 - (c) the personnel are entitled to the protection given to civilians under the Geneva Conventions or Protocol II to the Geneva Conventions; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator directs an attack; and
 - (b) the object of the attack is installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and
 - (c) the installations, material, units or vehicles are entitled to the protection given to civilian objects under the Geneva Conventions and Protocol II to the Geneva Conventions; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c).

268.80 War crime—attacking protected objects

- A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator directs an attack; and
 - (b) the object of the attack is any one or more of the following that are not military objectives:
 - (i) buildings dedicated to religion, education, art, science or charitable purposes;
 - (ii) historic monuments;
 - (iii) hospitals or places where the sick and wounded are collected; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

268.81 War crime—pillaging

- A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator appropriates certain property; and

- (b) the perpetrator intends to deprive the owner of the property and to appropriate it for private or personal use; and
- (c) the appropriation is without the consent of the owner; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 20 years.

268.82 War crime—rape

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

Penalty: Imprisonment for 25 years.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and
 - (b) the perpetrator knows of, or is reckless as to, the lack of consent; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (3) In this section:

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

- (4) In this section:

sexually penetrate means:

- (a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or

- (b) penetrate (to any extent) the mouth of a person by the penis of another person;
or
 - (c) continue to sexually penetrate as defined in paragraph (a) or (b).
- (5) In this section, being *reckless* as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.
- (6) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

268.83 War crime—sexual slavery

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes another person to enter into or remain in sexual slavery;
and
 - (b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) For the purposes of this section, *sexual slavery* is the condition of a person who provides sexual services and who, because of the use of force or threats:
- (a) is not free to cease providing sexual services; or
 - (b) is not free to leave the place or area where the person provides sexual services.
- (3) In this section:

sexual service means the use or display of the body of the person providing the service for the sexual gratification of others.

threat means:

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

268.84 War crime—enforced prostitution

- (1) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and
 - (b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and

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

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

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) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.85 War crime—forced pregnancy

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
 - (b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group as such; and
 - (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

forcibly made pregnant includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

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

268.86 War crime—enforced sterilisation

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator deprives one or more persons of biological reproductive capacity; and
 - (b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and
 - (c) the perpetrator's conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

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

268.87 War crime—sexual violence

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator does either of the following:
 - (i) commits an act or acts of a sexual nature against one or more persons;
 - (ii) causes one or more persons to engage in an act or acts of a sexual nature; without the consent of the person or persons, including by being reckless as to whether there is consent; and
 - (b) the perpetrator's conduct is of a gravity comparable to the offences referred to in sections 268.82 to 268.87; and
 - (c) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) Strict liability applies to paragraph (1)(b).

- (3) In subsection (1):

consent means free and voluntary agreement.

The following are examples of circumstances in which a person does not consent to an act:

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);

- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

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, against the person or another person; or
 - (b) taking advantage of a coercive environment.
- (4) In subsection (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person is consenting to the act or acts of a sexual nature.

268.88 War crime—using, conscripting or enlisting children

- (1) A person (the ***perpetrator***) commits an offence if:
- (a) the perpetrator uses one or more persons to participate actively in hostilities; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

- (2) A person (the ***perpetrator***) commits an offence if:
- (a) the perpetrator conscripts one or more persons into an armed force or group; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.

- (3) A person (the ***perpetrator***) commits an offence if:
- (a) the perpetrator enlists one or more persons into an armed force or group; and
 - (b) the person or persons are under the age of 15 years; and
 - (c) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age; and
 - (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.

268.89 War crime—displacing civilians

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

- (a) the perpetrator orders a displacement of a civilian population; and
- (b) the order is not justified by the security of the civilians involved or by imperative military necessity; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.

268.90 War crime—treacherously killing or injuring

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

- (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
- (b) the perpetrator kills the person or persons; and
- (c) the perpetrator makes use of that confidence or belief in killing the person or persons; and
- (d) the person or persons belong to an adverse party; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator invites the confidence or belief of one or more persons that the perpetrator is entitled to protection, or that the person or persons are obliged to accord protection to the perpetrator; and
- (b) the perpetrator injures the person or persons; and
- (c) the perpetrator makes use of that confidence or belief in injuring the person or persons; and
- (d) the person or persons belong to an adverse party; and
- (e) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.91 War crime—denying quarter

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

- (a) the perpetrator declares or orders that there are to be no survivors; and
- (b) the declaration or order is given with the intention of threatening an adversary or conducting hostilities on the basis that there are to be no survivors; and
- (c) the perpetrator is in a position of effective command or control over the subordinate forces to which the declaration or order is directed; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

268.92 War crime—mutilation

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct causes the death of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of another party to the conflict; and
 - (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

- (2) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to mutilation, such as by permanently disfiguring, or permanently disabling or removing organs or appendages of, the person or persons; and
 - (b) the perpetrator's conduct seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of another party to the conflict; and
 - (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.93 War crime—medical or scientific experiments

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
 - (b) the experiment causes the death of the person or persons; and
 - (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
 - (d) the person or persons are in the power of another party to the conflict; and
 - (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for life.

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

- (a) the perpetrator subjects one or more persons to a medical or scientific experiment; and
- (b) the experiment seriously endangers the physical or mental health, or the integrity, of the person or persons; and
- (c) the perpetrator's conduct is neither justified by the medical, dental or hospital treatment of the person or persons nor carried out in the interest or interests of the person or persons; and
- (d) the person or persons are in the power of another party to the conflict; and
- (e) the conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 25 years.

268.94 War crime—destroying or seizing an adversary's property

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator destroys or seizes certain property; and
 - (b) the property is property of an adversary; and
 - (c) the property is protected from the destruction or seizure under article 14 of Protocol II to the Geneva Conventions; and
 - (d) the perpetrator knows of, or is reckless as to, the factual circumstances that establish that the property is so protected; and
 - (e) the destruction or seizure is not justified by military necessity; and
 - (f) the perpetrator's conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years

- (2) Strict liability applies to paragraph (1)(c).

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

268.95 War crime—medical procedure

- A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator subjects one or more persons to a medical procedure; and
 - (b) the procedure seriously endangers the physical or mental health, or the integrity, of the person or persons; and
 - (c) the perpetrator's conduct is not justified by the state of health of the person or persons; and
 - (d) the perpetrator knows that, or is reckless as to whether, the conduct is consistent with generally accepted medical standards that would be applied under similar medical circumstances to persons who are of the same nationality as the perpetrator and are in no way deprived of liberty; and
 - (e) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, the country of the perpetrator as a result of an international armed conflict; and

- (f) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

268.96 War crime—removal of blood, tissue or organs for transplantation

- (1) A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator removes from one or more persons blood, tissue or organs for transplantation; and
 - (b) in the case of the removal of blood—the removal:
 - (i) is not for transfusion; or
 - (ii) is for transfusion without the consent of the person or persons; and
 - (c) in the case of the removal of skin—the removal:
 - (i) is not for grafting; or
 - (ii) is for grafting without the consent of the person or persons; and
 - (d) the intent of the removal is non-therapeutic; and
 - (e) the removal is not carried out under conditions consistent with generally accepted medical standards and controls designed for the benefit of the person or persons and of the recipient; and
 - (f) the person or persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and
 - (g) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 25 years.

- (2) In subsection (1):

consent means consent given voluntarily and without any coercion or inducement.

268.97 War crime—attack against works or installations containing dangerous forces resulting in excessive loss of life or injury to civilians

- A person (the *perpetrator*) commits an offence if:
 - (a) the perpetrator launches an attack against works or installations containing dangerous forces; and
 - (b) the attack is such that it will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent as to be excessive in relation to the concrete and direct military advantage anticipated; and
 - (c) the perpetrator knows that the attack will cause loss of life, injury to civilians, or damage to civilian objects, to such an extent; and
 - (d) the attack results in death or serious injury to body or health; and
 - (e) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.98 War crime—attacking undefended places or demilitarized zones

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

- (a) the perpetrator attacks one or more towns, villages, dwellings, buildings or demilitarized zones; and
- (b) the towns, villages, dwellings or buildings are open for unresisted occupation; and
- (c) the attack results in death or serious injury to body or health; and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for life.

268.99 War crime—unjustifiable delay in the repatriation of prisoners of war or civilians

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

- (a) one or more persons are in the power of, or are interned, detained or otherwise deprived of liberty by, an adverse party as a result of an international armed conflict; and
- (b) the perpetrator unjustifiably delays the repatriation of the person or persons to the person's own country or the persons' own countries; and
- (c) the delay is in violation of Part IV of the Third Geneva Convention or Chapter XII of Section IV of Part III of the Fourth Geneva Convention.

Penalty: Imprisonment for 10 years.

(2) Strict liability applies to paragraph (1)(c).

268.100 War crime—apartheid

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

- (a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act or is of a nature and gravity similar to any proscribed inhumane act; and
- (b) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the character of the act; and
- (c) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and
- (d) the perpetrator intends to maintain the regime by the conduct; and
- (e) the conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years.

268.101 War crime—attacking protected objects

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

- (a) the perpetrator directs an attack; and
- (b) the object of the attack is any one or more of the following that are not used in support of the military effort and are not located in the immediate proximity of military objectives:
 - (i) clearly recognised historic monuments;
 - (ii) works of art;
 - (iii) places of worship; and
- (c) the monuments, works of art and places of worship constitute the cultural or spiritual heritage of peoples and have been given special protection by special arrangement (for example, within the framework of a competent international organisation); and
- (d) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 20 years.