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PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO

Australia

En el presente documento se reproducen las siguientes leyes y reglamentos¹, que Australia ha notificado en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/AUS/1/Rev.1).

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¹Inglés solamente.



GENEVA CONVENTIONS ACT 1957

Reprinted as at 20 March 1991

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(5) Subsections (1), (2) and (3) of this section do not apply in relation to an appeal against a conviction or sentence, or against the decision of a court upon a previous appeal, if, at the time of the conviction or sentence, or of the decision of the court upon the previous appeal, as the case may be, there is no protecting power.

Reduction of sentence and custody of protected prisoners of war and internees

14.² (1) When a protected prisoner of war or a protected internee is convicted of an offence, the court shall:

- (a) in fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connexion with that offence before the trial; and
- (b) in fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

(2) Where the Minister is satisfied that a protected prisoner of war accused of an offence has been in custody in connexion with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than three months, the Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the Defence Force and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed for his trial.

PART IV—ABUSE OF THE RED CROSS AND OTHER EMBLEMS²**Use of Red Cross and other emblems**

15.² (1) Subject to this section, a person shall not, without the consent in writing of the Minister or of a person authorized in writing by the Minister to give consents under this section, use for any purpose whatsoever any of the following:

- (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross" ;
- (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent" ;
- (c) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding

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erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun" ;

- (d) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation;
- (e) a design or wording so nearly resembling any of the emblems or designations specified in the preceding paragraphs of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

Penalty: One hundred dollars.

(2) The Minister or a person authorized by the Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions.

(3) An authority given under section four of the *Geneva Convention Act 1938* and in force immediately before the commencement of this section shall be deemed to be a consent to the like effect given by the Minister under this section.

(4) Where a person is convicted of an offence against subsection (1) of this section, the court may, in addition to any fine, order the forfeiture to the Commonwealth of any goods upon or in connexion with which the emblem, designation, design or wording was used by that person.

(5) In the case of a trade mark registered before the day on which this Act received the Royal Assent, the preceding provisions of this section do not apply by reason only of its consisting of or containing an emblem or designation specified in paragraph (b) or (c) of subsection (1) of this section or a design or wording resembling such an emblem or designation; and where a person is charged with using such an emblem, designation, design or wording for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark so registered, it is a defence for him to prove:

- (a) that he lawfully used that emblem, designation, design or wording for that purpose before the day on which this Act received the Royal Assent; or
- (b) in a case where he is charged with using the emblem, designation, design or wording upon goods, that the emblem, designation, design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who

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lawfully used the emblem, designation, design or wording upon similar goods before the day on which this Act received the Royal Assent.

(6) Where an offence against this section committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) This section extends to the use in or outside Australia of an emblem, designation, design or wording referred to in subsection (1) of this section on any ship or aircraft registered in Australia.

(8) Proceedings under this section shall not be instituted without the consent in writing of the Attorney-General.

PART V—REGULATIONS

Regulations

16.² The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.



Geneva Conventions Amendment Act 1991

No. 27 of 1991

An Act to amend the *Geneva Conventions Act 1957*

[Assented to 4 March 1991]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Geneva Conventions Amendment Act 1991*.

(2) The *Geneva Conventions Act 1957*¹ is in this Act referred to as the Principal Act.

Commencement

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

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

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- (d) by inserting in paragraph (4) (a) “or by Protocol I” after “Convention”.

6. Section 8 of the Principal Act is repealed and the following section is substituted:

Proof of application of Convention or Protocol

“8. If, in proceedings under this Part in respect of a grave breach of any of the Conventions or of Protocol I, a question arises under:

- (a) Article 2 of that Convention (which relates to the circumstances in which the Convention applies); or
- (b) Article 1 of that Protocol (which relates to the circumstances in which the Protocol applies);

a certificate under the hand of the Minister of State for Foreign Affairs and Trade certifying to any matter relevant to that question is *prima facie* evidence of the matter so certified.”.

7. Before section 11 of the Principal Act the following section is inserted in Part III:

Court may determine whether person is a protected prisoner of war

“10A. (1) A person referred to in paragraph 1 or 2 of Article 45 of Protocol I may apply to the Supreme Court of the State or Territory in which the person is held in custody for a declaration that he or she has the status of a protected prisoner of war.

“(2) The jurisdiction of a Court for the purposes of this section is constituted by a single Judge.

“(3) Subject to subsection (4), the jurisdiction of the Court is to be exercised in open court.

“(4) The Court may order the exclusion of the public or persons specified by the Court from a sitting of the Court where the Court is satisfied that the presence of the public or those persons, as the case may be, would be contrary to the interests of justice or would not be in the public interest.”.

Use of Red Cross and other emblems, signs, signals, identity cards, insignia and uniforms

8. Section 15 of the Principal Act is amended:

- (a) by inserting after paragraph (1) (e) the following paragraph:

“(f) such other emblems, identity cards, signs, signals, insignia or uniforms as are prescribed for the purpose of giving effect to Protocol I.”;

- (b) by omitting from subsection (1) “One hundred dollars” and substituting “\$1,000”;

- (c) by adding at the end of subsection (2) “or of Protocol I”.

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Schedule 5

9. The Principal Act is amended by adding at the end the Schedule set out in Schedule 1 to this Act.

Formal amendments

10. The Principal Act is amended as set out in Schedule 2.
