

WAR CRIMES.

No. 48 of 1945.

An Act to provide for the Trial and Punishment
of War Criminals.

[Assented to 11th October, 1945.]

WHEREAS it is expedient to make provision for the trial and punishment of violations of the laws and usages of war committed during any war in which His Majesty has been engaged since the second day of September, One thousand nine hundred and thirty-nine, against any persons who were at any time resident in Australia or against certain other persons : Preamble.

BE it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *War Crimes Act 1945*.

Short title.

Commencement. 2. This Act shall come into operation on the day on which it receives the Royal Assent.

Definitions. 3. In this Act, unless the contrary intention appears—
 “any war” means any war in which His Majesty has been engaged since the second day of September, One thousand nine hundred and thirty-nine ;
 “Australia” includes the Territories of the Commonwealth ;
 “military court” means a military court convened under this Act ;
 “officer” means an officer of any part of the Defence Force or of any naval, military or air forces of any Power allied or associated with His Majesty in any war ;
 “this Act” includes all regulations and rules made thereunder ;
 “war crime” means—
 (a) a violation of the laws and usages of war ; or
 (b) any war crime within the meaning of the instrument of appointment of the Board of Inquiry appointed on the third day of September, One thousand nine hundred and forty-five, under the National Security (Inquiries) Regulations (being Statutory Rules 1941, No. 35, as amended by Statutory Rules 1941, Nos. 74 and 114 and Statutory Rules 1942, No. 273),
 committed in any place whatsoever, whether within or beyond Australia, during any war.

Application of Act to Territories.
Military courts.

4. This Act shall extend to every Territory of the Commonwealth.

5.—(1.) The Governor-General may—

- (a) convene military courts for the trial of persons charged with the commission of war crimes ;
- (b) appoint officers to constitute military courts ;
- (c) confirm the finding or finding and sentence of any military court or send back the finding and sentence or either of them for revision ;
- (d) mitigate or remit the punishment or any part of the punishment awarded by any sentence, or commute the punishment for any less punishment to which the offender might have been sentenced by the military court ; and
- (e) suspend the execution or currency of any sentence on such terms and conditions (if any) as the Governor-General determines.

(2.) Any appointment of an officer under this section may be by name or by designation of an office and may be subject to such restrictions, reservations, exceptions and conditions as the Governor-General determines.

(3.) A military court shall consist of not less than two officers in addition to the President of the court.

(4.) Notwithstanding anything contained in this Act, the Governor-General or any person authorized under this Act to convene military courts may appoint as a member (other than the President) of the court one or more officers of the naval, military or air forces of any Power allied or associated with His Majesty in any war, who are serving under his command or placed at his disposal for the purpose.

(5.) The number of officers appointed in any case under the last preceding sub-section shall not comprise more than half the members of the court, excluding the President.

6.—(1.) The Governor-General may delegate any of his powers under the last preceding section, either generally or in relation to any particular case or class of cases. Delegation of powers.

(2.) Any such delegation shall be revocable at will, and shall not prevent the exercise of any power by the Governor-General.

(3.) No revocation of a delegation shall affect anything done under the delegation prior to the revocation.

7. A military court shall have power to try persons charged with war crimes committed, at any place whatsoever, whether within or beyond Australia, against any person who was at any time resident in Australia, and for that purpose, subject to any direction by the Governor-General, to sit at any place whatsoever, whether within or beyond Australia. Power of military courts.

8.—(1.) If it appears to an officer authorized under this Act to convene military courts that a person within the limits of his command has, at any place, whether within or beyond those limits, committed a war crime, he may direct that that person, if not already in military custody, shall, pending trial, be taken into and kept in military custody in such manner and in the charge of such military unit as the officer directs. Arrest of person suspected of war crime.

(2.) The commanding officer of the unit having charge of the person shall be deemed to be the commanding officer of the person for the purposes of all matters preliminary and relating to trial and punishment.

(3.) Nothing in the last preceding sub-section shall authorize the commanding officer to dismiss the charge or deal with the accused summarily for a war crime.

9.—(1.) At any hearing before a military court the court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that the statement or document would not be admissible in evidence before a field general court martial. Evidence.

(2.) Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, evidence given upon any charge relating to that crime against any member of the unit or group may be received as evidence of the responsibility of each member of that unit or group for that crime.

(3.) A military court shall take judicial notice of the laws and usages of war.

Laws
applicable
to military
courts.

10. Except so far as is inconsistent with this Act, and subject to such exceptions, modifications, adaptations and additions as are prescribed by or under the *Defence Act 1903-1945* or this Act, the provisions of the Imperial Act known as the Army Act and any Imperial Acts amending or in substitution for it and for the time being in force and the Rules of Procedure made thereunder, in so far as they relate to field general courts-martial and to any matters preliminary or incidental thereto or consequential thereon, shall, so far as applicable, apply to and in relation to military courts and any matters preliminary or incidental thereto or consequential thereon, in like manner as if military courts were field general courts-martial and the accused were persons subject to military law charged with having committed offences on active service.

Punishments.

11.—(1.) A person found guilty by a military court of a war crime may be sentenced to and shall be liable to suffer death (either by hanging or by shooting) or imprisonment for life or for any less term; and, in addition or in substitution therefor, either confiscation of property or a fine of any amount, or both.

(2.) Where a war crime consists wholly or partly of the taking, distribution or destruction of property, the court may, in addition to any such sentence, order the restitution so far as practicable of such property, and, in default of complete restitution, award a penalty determined by the court to be equal in value to the property which has been so taken, distributed or destroyed, and not restored.

(3.) Sentence of death shall not be passed on any person by a military court without the concurrence of—

- (a) the members of the court—if the court consists of not more than three members; or
- (b) at least two-thirds of the members of the court—if the court consists of more than three members.

Extension
of application
of Act.

12. The provisions of this Act shall apply in relation to war crimes committed, in any place whatsoever, whether within or beyond Australia, against British subjects or citizens of any Power allied or associated with His Majesty in any war, in like manner as they apply in relation to war crimes committed against persons who were at any time resident in Australia.

Military
courts to
act in aid.

13. Every military court shall be auxiliary to, and act in aid of—

- (a) every other military court; and
- (b) every court of any other part of His Majesty's dominions or of any Power allied or associated with His Majesty in any war, constituted to try persons charged with war crimes, where those courts are required to be auxiliary to, and act in aid of, military courts.

14. The Governor-General may make regulations or rules 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, and in particular for prescribing matters providing for or in relation to—

Power to make
regulations or
rules.

- (a) the constitution of military courts ;
- (b) the laying of charges for war crimes ;
- (c) matters preliminary or incidental to the trial of war crimes ;
- (d) the segregation, arrest and custody of persons charged with, or suspected of having committed, war crimes ;
- (e) the powers, duties and procedure (including the reception and admissibility of evidence and the onus of proof), and the revision, confirmation, effect and consequences of the findings and sentences, of military courts, and the mitigation, remission and commutation of the sentences imposed by those courts ; and
- (f) the powers, functions and obligations of any person or class of persons in relation to the trial and punishment of war crimes or in relation to matters preliminary to the trial of war crimes.