



Crimes (Overseas) Act 1964

Act No. 116 of 1964 as amended

This compilation was prepared on 2 December 2005
taking into account amendments up to Act No. 128 of 2005

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to Offences committed by certain Persons outside Australia

1 Short title [see Note 1]

This Act may be cited as the *Crimes (Overseas) Act 1964*.

2 Commencement [see Note 1]

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

3 Interpretation

In this Act, unless the contrary intention appears:

act includes an omission.

ASIS has the same meaning as in the *Intelligence Services Act 2001*.

Australian means a person who:

- (a) is an Australian citizen; or
- (b) is not an Australian citizen but is permitted to travel to, enter and remain in Australia indefinitely under the *Migration Act 1958*.

Commonwealth officer has the same meaning as in the *Crimes Act 1914-1960*.

criminal laws of the Jervis Bay Territory means laws in force in that Territory (including unwritten laws):

- (a) creating offences or imposing criminal liability for offences; or
- (b) dealing with capacity to incur criminal liability; or
- (c) providing a defence or for reduction of the degree of criminal liability; or
- (d) dealing with other subjects declared by regulation to be within the ambit of the criminal laws of the Jervis Bay Territory; or
- (e) providing for the interpretation of laws of the kinds mentioned above.

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declared agreement or arrangement means a relevant agreement or arrangement that regulations made for the purposes of section 3B provide is a declared agreement or arrangement for the purposes of this Act.

declared foreign country means a foreign country that regulations made for the purposes of section 3C provide is a declared foreign country for the purposes of this Act.

declared part of a foreign country means a part of a foreign country that regulations made for the purposes of section 3C provide is a declared part of a foreign country for the purposes of this Act.

DIGO has the same meaning as in the *Intelligence Services Act 2001*.

DSD has the same meaning as in the *Intelligence Services Act 2001*.

foreign country:

- (a) means any country other than Australia or an external Territory (whether or not an independent sovereign State); and
- (b) includes:
 - (i) all the territory and maritime areas over which the country exercises sovereignty or sovereign rights; and
 - (ii) the air space over those areas.

international organisation means an organisation:

- (a) of which Australia and a country or countries other than Australia are members; or
- (b) that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia.

Minister for Foreign Affairs means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

relevant agreement or arrangement means an agreement or arrangement (whether formal or informal) between:

- (a) Australia and the United Nations or an organ of the United Nations; or

(b) Australia and another country.

staff member of ASIS, DIGO or DSD has the same meaning as in the *Intelligence Services Act 2001*.

Territory means an internal Territory.

3A When this Act applies to a person in relation to an act of the person in a foreign country

Australians given diplomatic, consular or similar immunity

- (1) Subject to subsection (2), this Act applies to a person in relation to an act of the person in a foreign country if:
 - (a) the person is an Australian at the time the act occurs (the *relevant time*); and
 - (b) the person is, at the relevant time, not subject to criminal proceedings in the courts of the foreign country in respect of the act because of:
 - (i) an immunity granted by the foreign country in accordance with the Vienna Convention on Diplomatic Relations (a copy of the English text of which is set out in the Schedule to the *Diplomatic Privileges and Immunities Act 1967*); or
 - (ii) an immunity granted by the foreign country in accordance with the Vienna Convention on Consular Relations (a copy of the English text of which is set out in the Schedule to the *Consular Privileges and Immunities Act 1972*); or
 - (iii) an immunity granted by the foreign country because of the person's relationship with an international organisation.
- (2) This Act does not apply to the person in relation to the act at a particular time after the act occurs if:
 - (a) the person:
 - (i) is, at that time, subject to criminal proceedings in the courts of the foreign country in respect of the act; or
 - (ii) will, at some future time, become subject to criminal proceedings in the courts of the foreign country in respect of the act because of the limited duration of the immunity granted to the person; and

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- (b) the person would continue to be subject to criminal proceedings in the courts of the foreign country in respect of the act even if the person were to be prosecuted under the laws of the Commonwealth in relation to that act and acquitted or convicted.

In determining whether the person would continue to be subject to criminal proceedings in the courts of the foreign country in respect of the act, have regard not only to the laws in force in the foreign country but also to any agreement entered into, or undertaking given, by the foreign country.

Australians undertaking tasks etc. under relevant agreement or arrangement

- (3) This Act also applies to a person in relation to an act of the person in a foreign country if:
 - (a) the person is an Australian at the time the act occurs (the *relevant time*); and
 - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in the foreign country under a relevant agreement or arrangement; and
 - (c) under, or because of:
 - (i) a relevant agreement or arrangement; or
 - (ii) an agreement or arrangement (whether formal or informal) between the United Nations, or an organ of the United Nations, and the foreign country;the person is, at the relevant time, not subject to criminal proceedings in the courts of the foreign country in respect of the act.
- (4) This Act also applies to a person in relation to an act of the person in a foreign country if:
 - (a) the person is an Australian at the time the act occurs (the *relevant time*); and
 - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in the foreign country under a relevant agreement or arrangement; and
 - (c) the relevant agreement or arrangement is, at the relevant time, a declared agreement or arrangement; and
 - (d) if, at the relevant time, the regulations provide that the relevant agreement or arrangement is a declared agreement or

arrangement only in relation to people who fall within a specified category—the person falls within that category at the relevant time.

Australians undertaking tasks etc. in declared foreign country etc.

- (5) This Act also applies to a person in respect of an act of the person in a foreign country if:
- (a) the person is an Australian at the time the act occurs (the *relevant time*); and
 - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in the foreign country:
 - (i) on behalf of the Commonwealth; or
 - (ii) pursuant to commitments or directions given by, or on terms determined by, the Commonwealth; and
 - (c) the foreign country is, at the relevant time, a declared foreign country; and
 - (d) if, at the relevant time, the regulations provide that the foreign country is a declared foreign country only in relation to people who fall within a specified category—the person falls within that category at the relevant time.
- (6) This Act also applies to a person in respect of an act of the person in a part of a foreign country if:
- (a) the person is an Australian at the time the act occurs (the *relevant time*); and
 - (b) the person is, at the relevant time, undertaking a task or project, or performing a function, in that part of the foreign country:
 - (i) on behalf of the Commonwealth; or
 - (ii) pursuant to commitments or directions given by, or on terms determined by, the Commonwealth; and
 - (c) that part of the foreign country is, at the relevant time, a declared part of a foreign country; and
 - (d) if, at the relevant time, the regulations provide that that part of the foreign country is a declared part of a foreign country only in relation to people who fall within a specified category—the person falls within that category at the relevant time.

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Acts done while undertaking tasks etc.

- (7) Subsections (8) and (9) apply if a person undertakes a task or project, or performs a function, in a foreign country (or a part of a foreign country) from time to time during a particular period (the *relevant period*).
- (8) The person is taken, for the purposes of subsections (3) to (6), to be undertaking the task or project, or performing the function, at all times during the relevant period.

Note: This means that this Act may apply to the person in relation to an act that occurs during the relevant period even if the act does not occur in the course of undertaking the task or project or performing the function.

Example: If an Australian is sent to the foreign country to undertake a particular project during a period, this Act applies not only to acts done while the Australian is actively engaged in carrying out the project but also to acts done during that period while the Australian is “off duty”.

- (9) If the person is sent to the foreign country (or that part of the foreign country) to undertake the task or project, or to perform the function, the person is taken, for the purposes of subsections (3) to (6), to be undertaking the task or project, or performing the function, at all times:
- (a) during the period that:
 - (i) starts when the person arrives in the foreign country (or that part of the foreign country); and
 - (ii) ends when the relevant period starts; and
 - (b) during the period that:
 - (i) starts when the relevant period ends; and
 - (ii) ends when the person leaves the foreign country (or that part of the foreign country).

Defence Force members and ASIS, DIGO and DSD staff not covered

- (10) Despite subsections (1) to (6), this Act does not apply to a person in respect of an act of the person if:
- (a) the person is a member of the Defence Force at the time the act occurs; or
 - (b) the person is a staff member of ASIS, DIGO or DSD at the time the act occurs and the act is done in the proper performance of a function of ASIS, DIGO or DSD.

Note: Section 14 of the *Intelligence Services Act 2001*:

- (a) authorises the Inspector-General of Intelligence and Security to give a certificate certifying any fact relevant to the question whether an act was done in the proper performance of a function of ASIS, DIGO or DSD; and
- (b) provides for such a certificate to be prima facie evidence of the facts certified in any proceedings.

3B Declared agreement or arrangements

- (1) The regulations may:
 - (a) provide that a relevant agreement or arrangement is a declared agreement or arrangement for the purposes of this Act; or
 - (b) provide that a relevant agreement or arrangement is a declared agreement or arrangement for the purposes of this Act but only in relation to a specified category of persons.
- (2) Without limiting paragraph (1)(b), the regulations may provide that the relevant agreement or arrangement is a declared agreement or arrangement for the purposes of this Act only in relation to persons who undertake specified tasks or projects, or perform specified functions, under the agreement or arrangement.
- (3) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister, after consulting the Minister for Foreign Affairs, must be satisfied that it is appropriate to do so having regard to:
 - (a) whether this Act would apply to Australians in relation to activities engaged in under the relevant agreement or arrangement even if the regulations were not made; and
 - (b) the nature of the activities to be engaged in by Australians under the relevant agreement or arrangement; and
 - (c) the period during which those activities are to be engaged in; and
 - (d) the number of Australians likely to be engaging in those activities; and
 - (e) the circumstances in which Australians engaging in activities under the relevant agreement or arrangement are subject to, or immune from, the criminal laws in force in the foreign country concerned; and
 - (f) any other relevant matter.

3C Declared foreign countries and declared parts of foreign countries

- (1) The regulations may:
 - (a) provide that a foreign country (or a part of a foreign country) is a declared foreign country (or a declared part of a foreign country) for the purposes of this Act; or
 - (b) provide that a foreign country (or a part of a foreign country) is a declared foreign country (or a declared part of a foreign country) for the purposes of this Act but only in relation to a specified category of persons.
- (2) Without limiting paragraph (1)(b), the regulations may provide that the foreign country (or the part of the foreign country) is a declared foreign country (or a declared part of a foreign country) for the purposes of this Act only in relation to persons who undertake specified tasks or projects, or perform specified functions, in the foreign country (or that part of the foreign country).
- (3) The regulations must specify:
 - (a) the day on which the foreign country (or the part of the foreign country) is to start being a declared foreign country (or a declared part of a foreign country) for the purposes of this Act; and
 - (b) the day on which the foreign country (or the part of the foreign country) is to cease being a declared foreign country (or a declared part of a foreign country) for the purposes of this Act.
- (4) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister, after consulting the Minister for Foreign Affairs, must be satisfied that it is appropriate to do so having regard to:
 - (a) whether this Act would apply to Australians in relation to acts in the foreign country (or the part of the foreign country) even if the regulations were not made; and
 - (b) the nature of the activities to be engaged in by Australians in the foreign country (or that part of the foreign country); and
 - (c) the period during which those activities are to be engaged in; and
 - (d) the number of Australians likely to be engaging in those activities; and

- (e) the circumstances in which Australians engaging in activities in the foreign country (or that part of the foreign country) are subject to, or immune from, the criminal laws in force in the foreign country; and
 - (f) any other relevant matter.
- (5) Regulations made for the purposes of subsection (1) within 3 months after the day on which the *Crimes (Overseas) Amendment Act 2003* receives the Royal Assent may provide that a foreign country (or a part of a foreign country) is taken to have been a declared foreign country (or a declared part of a foreign country) on and from 1 July 2003.

4 Application of Australian criminal law to person to whom this Act applies

- (1) If:
- (a) this Act applies to a person in relation to an act of the person in a foreign country; and
 - (b) the act would, if it had occurred in the Jervis Bay Territory, have contravened the criminal laws of the Jervis Bay Territory as in force at the time the act occurred;
- the criminal laws of the Jervis Bay Territory, as in force at the time the act occurred, are taken to have applied, at the time the act occurred, to the person in relation to the act and to so apply as laws of the Commonwealth.
- (2) Proceedings for an offence against the laws applied under subsection (1) must not be commenced without the Minister's written consent.
- (3) Before giving a consent under subsection (2), the Minister must consult with the Minister for Foreign Affairs.
- (4) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against the laws applied under subsection (1) before the necessary consent has been given.
- (5) If:
- (a) a person is a person to whom this Act applies in relation to an act at the time when the person is convicted of an offence against a law applied under subsection (1); and

(b) the person subsequently ceases to be a person to whom this Act applies in relation to the act because of subsection 3A(2); the person's ceasing to be a person to whom this Act applies in relation to the act does not affect the validity of the conviction or any sentence imposed in relation to the conviction.

5 Which offences are indictable

The question whether an offence against the laws applied under subsection 4(1) is to be, or may be, prosecuted or dealt with on indictment or summarily shall be determined in accordance with the law that would be applicable in relation to a prosecution under the laws in force in the Jervis Bay Territory if the act alleged to constitute the offence had occurred in the Jervis Bay Territory.

6 Arrest of offenders

- (1) A Commonwealth officer may, with such assistance as is necessary, arrest without warrant, outside Australia, a person to whom this Act applies in relation to an act if the officer has reasonable grounds for suspecting that the person has committed, is committing, has attempted to commit or is attempting to commit an offence against the laws applied under subsection 4(1).
- (2) The Commonwealth officer, or a person authorized by him, may hold the person so arrested in custody until he can be brought before a Justice of the Peace or other proper authority in Australia to be dealt with in accordance with law.
- (3) This section does not authorize the holding of a person in custody for a longer time than is reasonably necessary in the circumstances to enable him to be taken to Australia and there brought before a Justice of the Peace or other proper authority.

7 Trial of offenders

- (1) Subject to the succeeding provisions of this section, jurisdiction is conferred on the several courts of the States and Territories with respect to offences against the laws applied under subsection 4(1).
- (2) The jurisdiction conferred on courts by the last preceding subsection is conferred within the limits (other than limits having effect by reference to the places at which offences are committed)

of their several jurisdictions, but, in the case of a court of a State, subject to the conditions and restrictions specified in paragraphs (a), (b) and (c) of subsection (2) of section thirty-nine of the *Judiciary Act 1903-1960*.

- (3) The jurisdiction conferred on a court of summary jurisdiction by this section shall not be judicially exercised except by a Chief, Police, Stipendiary, Resident or Special Magistrate.
- (4) The trial on indictment of an offence against the laws applied under subsection 4(1) may be held:
 - (a) in any State; or
 - (b) in any Territory in which a court having jurisdiction to try the offence may sit.
- (5) Subject to this Act, the laws of a State or Territory with respect to the arrest and custody of offenders or persons charged with offences and the procedure for:
 - (a) their summary conviction;
 - (b) their examination and commitment for trial on indictment;
 - (c) their trial and conviction on indictment; and
 - (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith;and for holding accused persons to bail apply, so far as they are applicable, to a person who is charged in that State or Territory with an offence against the laws applied under subsection 4(1).
- (6) Where a person is convicted of an offence against the laws applied under subsection 4(1) and the laws of the State or Territory in which he is convicted make no provision, or insufficient provision, for carrying out the penalty imposed in respect of the offence, the penalty shall be enforced or carried into effect as the Governor-General directs.
- (7) Except as provided by this Act, the *Judiciary Act 1903-1960* applies in relation to offences against the laws applied under subsection 4(1).

8 Evidence

- (1) The Minister may, in writing, authorise:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department;to issue certificates under this section.
- (2) A person authorised to issue certificates under this section may certify:
 - (a) that a person specified in the certificate was, on a date that is before 1 July 2003 and that is specified in the certificate, a person to whom this Act (as in force on that date) applied; and
 - (b) that, on that date, that person was a person who, under arrangements referred to in paragraph 4(b) of this Act (as in force on that date), was not to be subject to proceedings in the courts of a country specified in the certificate in respect of acts or omissions taking place in that country.
- (3) A person authorised to issue certificates under this section may certify as to any matter that is relevant to determining whether a person specified in the certificate was, on a date that is on or after 1 July 2003 and that is specified in the certificate, a person to whom this Act (as in force on that date) applied in relation to an act.
- (4) A certificate under subsection (2) or (3) is admissible as prima facie evidence of the matter stated in the certificate.
- (5) For the purposes of this section, a document purporting to be a certificate under subsection (2) or (3) is, unless the contrary is proved, taken to be such a certificate and to have been duly given.
- (6) A certificate under subsection (2) or (3) must not be admitted in evidence in proceedings for an offence against this Act, or against the laws applied under subsection 4(1), unless:
 - (a) the person charged with the offence; or
 - (b) a barrister or solicitor who has appeared for the person in those proceedings;has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with

reasonable evidence of the intention to produce the certificate as evidence in the proceedings.

- (7) Subject to subsection (8), if a certificate under subsection (2) or (3) is admitted in evidence in proceedings for an offence against this Act, or against the laws applied under subsection 4(1), the person charged with the offence may require the person who issued the certificate (the *certificate issuer*) to be called as a witness for the prosecution and cross-examined as if the certificate issuer had given evidence of the matters stated in the certificate.
- (8) Subsection (7) does not entitle the person charged to require the person who issued the certificate (the *certificate issuer*) to be called as a witness for the prosecution unless:
 - (a) the prosecutor has been given at least 4 days notice of the person's intention to require the certificate issuer to be so called; or
 - (b) the Court, by order, allows the person charged to require the certificate issuer to be so called.
- (9) Any evidence given in support, or in rebuttal, of a matter stated in a certificate under subsection (2) or (3) must be considered on its merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

9 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the (Overseas) Act 1964****Note 1**

The *Crimes (Overseas) Act 1964* as shown in this compilation comprises Act No. 116, 1964 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 15 October 2003 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes (Overseas) Act 1964</i>	116, 1964	23 Nov 1964	23 Nov 1964	
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (a)	—
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (b)	—
<i>Crimes and Other Legislation Amendment Act 1994</i>	182, 1994	19 Dec 1994	S. 31: 16 Jan 1994 (c)	—
<i>Crimes (Overseas) Amendment Act 2003</i>	102, 2003	15 Oct 2003	Schedule 1: 1 July 2003 Remainder: Royal Assent	Sch. 1 (items 25, 26) [see Table A]
<i>Intelligence Services Legislation Amendment Act 2005</i>	128, 2005	4 Nov 2005	Schedules 1–8: 2 Dec 2005 Remainder: Royal Assent	—

Act Notes

- (a) The *Crimes (Overseas) Act 1964* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- “(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.”
- (b) The *Crimes (Overseas) Act 1964* was amended by section 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- “(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.”
- (c) The *Crimes (Overseas) Act 1964* was amended by section 31 only of the *Crimes and Other Legislation Amendment Act 1994*, subsection 2(4) of which provides as follows:
- “(4) The amendments made by this Act to the *Australian Federal Police Act 1979*, the *Crimes (Aviation) Act 1991* (other than the amendment made to Schedule 5 to that Act), the *Crimes (Hostages) Act 1989*, the *Crimes (Internationally Protected Persons) Act 1976*, the *Crimes (Overseas) Act 1964*, the *Crimes (Superannuation Benefits) Act 1989*, the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*, the *Customs Act 1901*, the *Director of Public Prosecutions Act 1983*, the *Extradition Act 1988*, the *Financial Transaction Reports Act 1988* and to sections 23 and 59 of the *Proceeds of Crime Act 1987* commence on the 28th day after the day on which this Act receives the Royal Assent.”

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3.....	am. No. 216, 1973; No. 65, 1985; No. 102, 2003; No. 128, 2005
Subhead. to s. 3A(10)	am. No. 128, 2005
S. 3A	ad. No. 102, 2003 am. No. 128, 2005
Note to s. 3A(10)	am. No. 128, 2005
Ss. 3B, 3C	ad. No. 102, 2003
S. 4.....	am. No. 28, 1991; No. 182, 1994 rs. No. 102, 2003
S. 5.....	am. No. 28, 1991; No. 102, 2003
Ss. 6, 7	am. No. 102, 2003
S. 8.....	rs. No. 102, 2003
S. 9.....	ad. No. 102, 2003

Table A

Table A

Application, saving or transitional provisions

Crimes (Overseas) Amendment Act 2003 (No. 102, 2003)

Schedule 1

25 Application of amendments

- (1) Subsection 3A(1) of the *Crimes (Overseas) Act 1964* applies only in relation to acts that occur after the day on which this Act receives the Royal Assent.
- (2) Subsection 3A(3) of the *Crimes (Overseas) Act 1964* applies only in relation to acts that occur after the day on which this Act receives the Royal Assent.
- (3) The provisions of the *Crimes (Overseas) Act 1964* (as in force immediately before 1 July 2003) continue to apply, after that date, in relation to a person serving in a country outside Australia under arrangements made between the Commonwealth and the United Nations as if the amendments made by this Schedule had not been made.
- (4) Subitem (3) ceases to have effect at the end of the day on which this Act receives the Royal Assent.
- (5) To avoid doubt, sections 7 and 8 of the *Acts Interpretation Act 1901* apply to the provisions of the *Crimes (Overseas) Act 1964* (as in force immediately before 1 July 2003) ceasing to have effect under subitem (4) on the day on which this Act receives the Royal Assent as if those provisions had been repealed by this Act on that day.

26 Savings

- (1) A certificate by the Minister in force under section 8 of the *Crimes (Overseas) Act 1964* immediately before this Act commences continues to have effect after this Act commences as if:
 - (a) the certificate had, immediately after this Act commences, been issued under subsection 8(2) of the *Crimes (Overseas) Act 1964* by the Secretary of the Department; and

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- (b) the Secretary of the Department had been authorised by the Minister to issue certificates under section 8.
- (2) A certificate that:
- (a) the Minister gives on or after 1 July 2003 under section 8 of the *Crimes (Overseas) Act 1964* as it continues to apply under subitem 25(3); and
 - (b) is in force immediately before this Act receives the Royal Assent;
- continues to have effect after this Act receives the Royal Assent as if:
- (c) the certificate had, immediately after this Act receives the Royal Assent, been issued under subsection 8(2) or (3) of the *Crimes (Overseas) Act 1964* by the Secretary of the Department; and
 - (d) the Secretary of the Department had been authorised by the Minister to issue the certificates under section 8.