

Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill

Submission to the Parliament of Australia
Senate Legal and Constitutional Affairs References Committee

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By

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Background and analysis

1. The perpetration of genocide, crimes against humanity and war crimes often involves governmental actors, and commencing proceedings against alleged perpetrators of such crimes can be politically sensitive. This is true in the case of both Australian nationals, such as members of government and of the Australian Defence Force, and foreign nationals, since proceedings against the latter may impact Australia's relationships with other states.
2. The requirement for the Attorney-General's consent to proceedings under Division 268 of the *Criminal Code* was included to prevent the commencement of such politically undesired cases.
3. We, scholars with expertise in the fields of international criminal law and Australian criminal law, agree with the observation made in the *Explanatory Memorandum* that the current requirement for the Attorney-General's consent represents a potential conflict of interest, given that proceedings for genocide, crimes against humanity and war crimes could conceivably be sought against government officials, or against other individuals in circumstances that raise sensitive political matters. This could negatively impact Australia's ability to prevent and punish such crimes, which would run counter to Australia's international obligations and commitment to hold perpetrators of such serious crimes to account.
4. Since other common law jurisdictions, like the United Kingdom, Canada and New Zealand, have similar provisions in their respective legislation pertaining to atrocity crimes, Australia would play a pioneering role in further promoting accountability for such crimes by removing the requirement for the Attorney-General's consent to such proceedings.
5. The removal of the requirement for the Attorney-General's consent to such proceedings is sound from both an international law perspective and an Australian criminal law perspective. It promotes the rule of law, the separation of powers in a democracy and accountability for serious crimes.

Conclusion and recommendation

6. We therefore support the proposed changes and recommend adoption of the Bill.