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MAPW Submission to Inquiry into The Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024

This submission is made by the Medical Association for Prevention of War (MAPW). MAPW is a not-for-profit organisation that aims to reduce the harm caused by warfare through the promotion of peace and disarmament. We advocate for the abolition of all nuclear weapons. MAPW is the Australian affiliate of the International Physicians for the Prevention of Nuclear War (IPPNW; 1985 Nobel Peace Prize).

Recommendations

- Section 268.121 be amended
- Section 268.122 be repealed
- A specialised, permanent unit to investigate international crimes should be established

Considerations

Australia has an obligation to investigate and prosecute war crimes, crimes against humanity and genocide, and has universal jurisdiction over international crimes. It has not always acted on this obligation, most notably in relation to the finding that the “Australian practice of Indigenous child removal involved ... genocide as defined by international law.”¹

The Sections of the Criminal Code in question are barriers to the prosecution of serious crimes, and inhibit Australia’s ability to uphold international law.

The discretion currently granted to the Attorney-General is too broad. The Attorney-General may choose to proceed or not proceed with a prosecution on any grounds, or on no grounds at all, and does not have to provide any reasons for their decision; this broad discretion is not sufficiently subject to review. This total discretion, veto power, and lack of accountability provides the opportunity for the exercise of bias, or the appearance of bias, and for political considerations, or the appearance of political considerations, to play a role in the Attorney-General’s decision-making.

¹Bringing them Home: The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.

AFFILIATE



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Section 268.121 should be amended to include a legal test for determining whether a prosecution should commence, and to limit the Attorney-General's discretion. The test should be developed through a proper process.

Section 268.122 should be repealed to ensure the public has full opportunity to scrutinise assessments made by the Attorney-General.

These changes, however, do not in and of themselves increase the institutional capacity for investigations and prosecutions of international crimes. In line with the policy paper written by the Australian Centre for International Justice², we further recommend that a specialised, permanent unit to investigate international crimes should be established.

²<https://acij.org.au/wp-content/uploads/2023/09/ACIJ-Policy-Paper-Challenging-Impunity-Why-Aus-Needs-a-Permanent-Specialised-Intl-Crimes-Unit-FINAL.pdf>