

Submission to the Lidia Thorpe's Bill: Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024

I'm writing in support of the "***Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024***" (***The Bill***). Our current legislation requires any claimant wanting bring prosecutions including genocide, crimes against humanity and war crimes against another party to the **Attorney General (AG)** where the **AG** may sue the party, use his fiat to allow that claimant to sue the party or dismiss the prosecutions. Since 2006 several heinous acts have been presented to the **AG** who has failed to act on the claimant's behalf. This is intolerable!!

Background:

Australia is a signatory to the **Genocide Convention – 1948** (the **Convention**) which was then ratified when Australia amended the **Criminal Code Act in 2002** (**The Act**) to criminalise Genocide, Crimes Against Humanity and War Crimes or "**Atrocity Crimes**".

The Federal Attorney General is Australia's First Law Officer whose primary responsibility is to protect the Rule of Law and the integrity of the Courts. This responsibility requires the AG to ensure:

1. Laws are clear, predictable and accessible;
2. Laws are publicly made and the community is able to participate in the law-making process;
3. Laws are publicly adjudicated in courts that are independent from the executive arm of government;
4. Dispute settlement is fair and efficient where parties cannot resolve disputes themselves.

The AG supports the Australian Government in being accountable for actions, making rational decisions and protecting human rights. It is my contention that the AG has failed to carry out their duties without fear or favour, but for the purposes of this submission we'll stick to the recent past.

Within the above responsibilities the AG has the power to initiate and terminate public prosecutions and to take over private prosecutions. For the public to initiate a public prosecution, they require the **Attorney General's fiat**. In 2011 and again in 2018 the **AG** refused to use his **fiat** to allow two public prosecutions to go ahead. In doing so, the **AG** failed to take into account the **Public Interest** and refused permission for the prosecutions to proceed. Both cases contravened the Convention in that it was in the **Public Interest** that these cases be heard.

In 2011, the Australian AG Robert McClelland refused to sanction a war crimes case initiated by Australian Tamil man Jegan Waran who had witnessed Sri Lankan forces bomb hospitals and ambulances during the Sri Lankan civil war.

Later in 2018, when Christian Porter was Australia's **AG**, he blocked the Australian Rohingya community from pursuing justice through the courts against Aung San Suu Kyi for the genocide of the Rohingya people in Myanmar.

Both of these cases should have been heard as both contravene **The Act**. *Both* are heinous crimes and both are in the **Public Interest**. It is reprehensible that the Australian Government has failed to act on matters of Public or National Interest!

Logic:

Our reluctance to commit cases of **Atrocity Crimes** may lay too close for comfort for our Attorneys General with reminders of our colonial past being continually paraded before us all. The injustice of this era which continues today with the failings of successive governments to comes to grips with the Stolen Generations, Bringing Them Home Report, Closing the Gap, Aboriginal Death in Custody, the United Nations Declaration on the Rights of Indigenous Peoples and much more.

In the light of Australia's own genocidal failings, governments of all persuasions have reluctant to step out of the shadows and commit cases of **Genocide** to the spotlight of the courts. It's imperative that this bill be seen as part of a strategy to improve and enhance our legal system, encouraging the ideal that nobody is above the law. To extend our social values of a caring, sharing as a homogeneous nation to the rest of the world!

The changes represent **Truth Telling**, accountability and leadership to the people of Australia and the world. Until the Federal Government commits to be accountable and in doing so holds others to account, these **Atrocity Crimes** will continue. This lack of adherence to human rights will impact on everybody globally. We all have a right to live in a peaceful and just world and the Federal Government's lack of will in this area is a blatant disregard of the will of the people and will be exposed time and again. I also believe that the lack of will in this sphere also impinges on our democracy or in this case the lack of it!

The **Bill** commits to reviewing past all cases brought before the **AG** which was the original intention of the **Convention** to protect the community from **Atrocity Crimes**. Currently the **AG** has unfettered discretion as to whether a case is prosecuted or otherwise and does not have any criteria to apply, does any reason for their decision have to be given and is totally unaccountable for their actions.

This bill strengthens the value of human rights for all Australians and will help put an end to **Genocide** worldwide. The bill also encapsulates the original spirit and intent of the **Convention** in a bid to ensure that **Atrocity Crimes** never happen again. It seeks to uphold the rule of law so frequently mouthed by the Government, prioritise, promote and protect human rights, humanity generally and indigenous peoples globally.

Conclusion:

It's with the original spirit and the intent of the **Convention**, in a bid to fully uphold human rights and that we live in a so-called democracy that the original **Criminal Code** should be amended. It is my contention that the **Attorney General** (or any politician including the Prime Minister) should NOT have the sole right, the **AG's fiat**, to determine which cases should be prosecuted and which should not. The right to decide whether a public prosecution should proceed or not must be decided by the people aka the judicature. It is therefore: that I recommend that **the Act** be amended to the **Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024**.