

Committee Secretary

[Criminal Code Amendment (Genocide, Crimes against Humanity and War Crimes) Bill 2024]

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AUSTRALIA

CRIMINAL CODE AMENDMENT (GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES) BILL 2024

Firstly I would like to commend the Senate for bringing this important matter to a Senate Inquiry.

There are some significant problems in regard to Australia's current framework relating to the Crimes of Genocide, Crimes against Humanity and War Crimes. Not only does it compromise the Separation of Powers in a domestic context, but it also shows little regard to the Principles under which the International Criminal Court was founded.

Within the Westminster System of Government, there are some protocols inherited from Britain which are implicit in the governance arrangements of the Constitutional Monarchy called Australia.

One of these protocols, which is implied in the Constitution, is the Separation of Powers, a separation between the Parliament, the Executive and the Courts.

This is to create a balance within the power structures and ensure Responsible Government. It's sometimes referred to as the Three Pillars of Government

I'm no great fan of the Constitution of the Commonwealth of Australia 1901, since in many ways, it's just the Rule Book for how some British Colonies could federate into a British Dominion. It sets out which Government, the State or the Federal, is responsible for the differing areas of Governance.

Through the last Century, efforts were made to make the arrangements more independent from Britain, including adopting the Westminster Act of 1932, a decade after Westminster, then to the 1948 initiative of having Australian Citizens, rather than British Colonial Subjects. Later there was the 1986 Australia Acts which severed most of the remaining ties to Britain, per se, without impinging on the Roles and Functions of the Monarch and their Representatives.

The general drift has been towards a more autonomous Australia with its own independent legal system.

A pillar of the retained Westminster System is known as the Separation of Powers between the Judiciary, the Parliament and the Executive. These are laid out if not explicitly, in the 1901 Constitution. The same document that brings the Parliament of Australia into existence also creates the High Court.

But in 2002, this separation of powers appears to have been severely compromised. I refer of course to the "Attorney General's fiat", which is the subject of this Senate Committee.

It is political over-reach into the realm of the Courts and Judiciary.

What is so dangerous about this political intervention into the Courts, is that should an ally power decide to use Australia as a safe haven for their worst offenders, the politicians cannot hide behind "Our Constitution prohibits us from taking in these alleged criminals."

I'm not sure whether that was part of the plan back in 2002, but it's a real consequence of that provision. As an Australian, I find it repulsive that individuals who should be fronting the ICC can seek safe haven from the International Courts here in Australia, if that's what the Attorney General of the time deems convenient..

Further to this point, as recent revelations reveal. and I use this report as an example of what can happen, though it wouldn't just be the State of Israel which uses such tactics, it's an example of what can occur.

see here https://www.theguardian.com/world/article/2024/may/28/israeli-spy-chief-icc-prosecutor-war-crimes-inquiry?fbclid=IwZXh0bgNhZW0CMTEAAR3OaiRlM9_EXLqxhpaAiHd-xuhFmQCAB4-VtF4tI02T6BvPQOWw7k6Q3mA_aem_AbKJCidCBgZUyNBbdEOFnM6XnRV1tx4IWZ0iL51tZq7gb7P3bZuTWLulgtSsk5k6jtZNAcdGE8fFoVpe6GzRL3Eo

Similarly, the Attorney General's fiat could also jeopardise the safety of the Attorney General, their family and friends, in circumstances where a Foreign Power does not want one of their Genocidaire being sent to the ICC. Pressure could be applied by Foreign Actors.

It would be cleaner and clearer, if such matters were in the Laws of Australia, as a signatory to the Rome Statute, and Member Party to the ICC, rather than have some discretionary anomaly left to an individual, the Attorney General.

To minimise Foreign interference, to enhance Australia's Sovereignty and to more properly support International.Law, get rid of the Attorney General's fiat.

yours in good faith

Graeme Taylor