

1998-99

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Anti-Genocide Bill 1999

No. , 1999

(Senator Greig)

**A Bill for an Act to give effect to the Convention on
the Prevention and Punishment of the Crime of
Genocide, and for related purposes**

Contents

1	Short title	1
2	Commencement.....	1
3	Schedule(s).....	2
Schedule 1—Amendment of the Genocide Convention Act 1949		3

1 **A Bill for an Act to give effect to the Convention on**
2 **the Prevention and Punishment of the Crime of**
3 **Genocide, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Anti-Genocide Act 1999*.

7 **2 Commencement**

8 This Act commences on the day on which it receives the Royal
9 Assent.

1
2
3
4
5

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Schedule 1—Amendment of the Genocide Convention Act 1949

1 Section 3

Insert:

Australia includes the external Territories.

2 Section 3

Insert:

genocide means any of the following acts committed with intent to destroy, in whole or in part, a distinct group of people including, but not limited to, a national, ethnical, racial or religious group, or a group based on gender, sexuality, political affiliation or disability:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3 At the end of section 3

Add:

(2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the same meaning as it has in the Convention.

4 After section 5

Insert:

1 **6 Application**

2 This Act extends to acts done or omitted to be done outside
3 Australia.

4 **7 Act binds the Crown**

5 This Act binds the Crown in right of the Commonwealth or of a
6 State.

7 **8 Effect of this Act on other laws**

8 Except as provided by this section, this Act is not intended to
9 exclude or limit the operation of any other law of the
10 Commonwealth or any law of a State or Territory.

11 **9 Offence of genocide**

12 (1) A person who commits an act of genocide is guilty of an offence
13 against this Act and is punishable on conviction by imprisonment
14 for life.

15 (2) A person who conspires with another person to commit an act of
16 genocide is guilty of an offence against this Act and is punishable
17 on conviction by imprisonment for life.

18 (3) A person who publicly urges the commission of an act of genocide
19 is guilty of an offence against this Act and is punishable on
20 conviction by imprisonment for a period not exceeding 10 years.

21 (4) A person who attempts to commit an act of genocide is guilty of an
22 offence against this Act and is punishable on conviction by
23 imprisonment for life.

24 (5) A person who aids, abets, counsels or procures the commission of
25 an act of genocide is guilty of an offence against this Act and is
26 punishable on conviction by imprisonment for life.

27 Note: Chapter 2 of the *Criminal Code* sets out the general principles of
28 criminal responsibility.

1 **10 Only Australian citizens or persons present in Australia may be**
2 **prosecuted**

3 A person shall not be charged with an offence against this Act
4 unless the person:

- 5 (a) is an Australian citizen; or
6 (b) is present in Australia.

7 **11 Jurisdiction of courts and choice of law**

8 Where a person is charged with an offence against this Act, then,
9 for the purposes of:

- 10 (a) determining whether a court of a State or Territory has
11 jurisdiction in relation to the offence; and
12 (b) an exercise of jurisdiction by such a court in relation to the
13 offence; and
14 (c) a proceeding connected with such an exercise of jurisdiction;
15 and
16 (d) an appeal arising out of, or out of a proceeding connected
17 with, such an exercise of jurisdiction;

18 this Act has effect, in relation to an act that is, or is alleged to be,
19 the offence, as if a reference in section 12 to a part of Australia
20 were a reference to that State or Territory.

21 **12 Alternative verdicts**

22 (1) Where:

- 23 (a) a person is charged with an offence against this Act; and
24 (b) the offence is alleged to be an act that, under the law in force
25 in a part of Australia at the time (in this subsection called the
26 *relevant time*) when the act was alleged to have been done,
27 would have constituted an offence of a particular kind if it
28 had been done in that part of Australia at the relevant time;
29 and
30 (c) on the person's trial for the offence, the jury:
31 (i) is not satisfied that the person is guilty of the offence
32 charged; and
33 (ii) is satisfied that the person is guilty of a different offence
34 against this Act (in this section called the *alternative*
-

- 1 *offence*) because the person has done an act that, under
2 the law in force in that part of Australia at the relevant
3 time, would, if it had been done in that part of Australia
4 at that time, have constituted an offence (in this section
5 called the *local offence found to have been proved*) of a
6 kind different from the kind of offence referred to in
7 paragraph (b); and
- 8 (d) by virtue of the law in force in that part of Australia at the
9 relevant time or at the time of the trial, a person charged with
10 an offence of the kind referred to in paragraph (b) could in
11 certain circumstances be found not guilty of the last-
12 mentioned offence but guilty of an offence of the kind
13 referred to in subparagraph (c)(ii);
14 the jury may find the person not guilty of the offence charged but
15 guilty of the alternative offence.
- 16 (2) If the jury finds the person guilty of an offence under this Act in
17 the circumstances referred to in subsection (1), it shall, when
18 returning its verdict, tell the judge that it is satisfied as mentioned
19 in subparagraph (1)(c)(ii) and specify to the judge the kind of local
20 offence found to have been proved.

21 **13 No defence of exceptional circumstances or superior orders**

- 22 It is not a defence in a proceeding for an offence against this Act
23 that:
- 24 (a) the act constituting the offence was done out of necessity
25 arising from the existence of a state of war, a threat of war,
26 internal political instability, a public emergency or any other
27 exceptional circumstance; or
- 28 (b) in doing the act constituting the offence the accused acted
29 under orders of a superior officer or public authority;
- 30 but the circumstances referred to in paragraphs (a) and (b) may, if
31 the accused is convicted of the offence, be taken into account in
32 determining the proper sentence.

33 **14 Section 38 of Judiciary Act**

- 34 A matter arising under this Act, including a question of
35 interpretation of the Convention for the purposes of this Act, shall,
-

1 for the purposes of section 38 of the *Judiciary Act 1903*, be
2 deemed not to be a matter arising directly under a treaty.