

AUSTRALIAN 
 **CENTRE**
FOR INTERNATIONAL
JUSTICE 

Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

Submission to the Senate Legal and
Constitutional Affairs Legislation Committee

22 March 2024

About the Australian Centre for International Justice

The Australian Centre for International Justice (ACIJ) is an independent not-for-profit legal centre dedicated to seeking justice and accountability for victims and survivors of serious human rights violations. We work towards developing Australia's role in investigating, prosecuting, and providing remedies for these violations. We work with affected communities and partners locally and abroad in the global fight to end the impunity of those responsible for these violations. Our work is informed by the values of justice, accountability, human rights, dignity, courage and solidarity.

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1 Introduction

The Australian Centre for International Justice (**ACIJ**) welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Legislation Committee (the **Committee**) Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 (the **Inquiry**).

Our submission focuses on the impact that the proposed amendments to the *Crimes Act 1914* (Cth) would have on victim-survivors and witnesses of international crimes (war crimes, crimes against humanity, genocide and torture). The submission also highlights the need for the Australian government to take a more holistic approach in considering the rights of victims of international crimes in Australia.

Recommendations

Recommendation 1

The expanded range of offences to which special rules of proceedings involving vulnerable persons in Part IAD of the *Crimes Act 1914* (Cth) would apply should include crimes of genocide (within the meaning of Division 268 of the Commonwealth Criminal Code).

Recommendation 2

The Australian Government should commit to undertake an inquiry into how the rights of victims of international crimes can be better protected in Australia.

2 Support for proposed amendments that should be expanded to include crimes of genocide

ACIJ's work focuses on seeking avenues for justice and accountability for victims and survivors of grave human rights abuses, including through the criminal justice system. This submission thus focuses on how the proposed amendments to the *Crimes Act 1914* (Cth) might impact on the rights of victim-survivors and witnesses of international crimes.

We understand that the proposed amendments would expand the range of offences to which special rules of proceedings involving vulnerable persons in Part IAD of the *Crimes Act 1914* (Cth) apply. The effect of these amendments would be that the special rules would apply to vulnerable persons involved in criminal proceedings for offences in Division 268 (crimes against humanity, war crimes, crimes against the administration of justice of the International Criminal Court) and Division 274 (torture) of the *Commonwealth Criminal Code*. These special rules include expanding the ways in which vulnerable persons may give evidence, restrictions on publishing material that identifies vulnerable persons, and the ability for vulnerable persons to have a support person to accompany them when giving evidence.

ACIJ is supportive of such amendments. Victims and survivors of international crimes may be particularly vulnerable due to the severity of the crimes alleged, associated trauma, ongoing risks to safety depending on the political and security context, and cultural and language barriers. In recognition of this, international courts and tribunals already provide the ability for similar, more extensive protective measures for victims and witnesses of these kinds of crimes.¹ The proposed amendments, which expand protections to victims of war crimes, crimes against humanity, crimes against the administration of justice of the International Criminal Code and torture, would go some way in providing a degree of safety and protection to victims and survivors of international crimes.

¹ For example, anonymity through face/voice distortion, use of pseudonyms, closed sessions/exclusion of the public, facilitation of testimony through closed circuit television, temporary or permanent relocation of witnesses: see [Rome Statute of the International Criminal Court](#) art 68; International Residual Mechanism for Criminal Tribunals, [Rules of Procedure and Evidence](#), Rule 86 – Measures for Protection of Victims and Witnesses.

The amendments are particularly pertinent and timely given the upcoming trials that are likely to take place in relation to alleged war crimes by Australian special forces in Afghanistan.

However, ACIJ notes that the proposed amendments have not included crimes of genocide, also located in Division 268 of the Commonwealth Criminal Code, in the expanded list of offences to which Part IAD of the *Crimes Act 1914* (Cth) will apply. It is unclear why this is the case. Genocide has been said to constitute “the crime of crimes”.² Victims and survivors of genocide share the same vulnerabilities as victims and survivors of other atrocity crimes. Failure to extend the special procedures to crimes of genocide would lead to inconsistency, with some victims and survivors of atrocity crimes having greater rights and protections than other victims and survivors of international crimes, for no clear policy reason.

Recommendation 1

The expanded range of offences to which special rules of proceedings involving vulnerable persons in Part IAD of the *Crimes Act 1914* (Cth) would apply should include crimes of genocide (within the meaning of Division 268 of the Commonwealth Criminal Code).

² *Prosecutor v Kambanda*, Judgment and Sentence, ICTR-97-23-S, 4 September 1998, [16], William Schabas, *Genocide in International Law*, Cambridge, Cambridge University Press, 2000.

3 The rights and protections of victims of international crimes requires a more holistic inquiry

In July 2023, ACIJ provided a written submission to the Parliamentary Joint Committee on Human Rights for its Inquiry into Australia’s Human Rights Framework (**the Human Rights Framework submission**) (**Enclosure 1**).³ The submission focused on how Australia must recognise and address the missing pieces of its human rights commitments: international criminal justice and victims’ rights mechanisms. In doing so, it built upon ACIJ’s persistent calls for the Australian government to recognise and take action to ensure victim rights, protections and participation in domestic processes regarding international crimes offences, particularly in relation to the allegations of war crimes committed in Afghanistan.⁴

While the proposed amendments to the *Crimes Act 1914* (Cth) go some way in providing protections to victims and witnesses of international crimes, the Australian government should commit to undertaking an inquiry to obtain a more holistic view of what rights and protections are appropriate for these victims and witnesses and how Australia can best comply with its international law obligations in this respect. As noted in ACIJ’s Human Rights Framework submission, such an inquiry could consider:

1. Australia’s ability to provide adequate, effective and prompt reparation to victims and survivors of international crimes, particularly in light of the absence of a federal victims of crime compensation scheme;
2. Australia’s ability to undertake outreach and communication with victims and survivors of international crimes;

³ Australian Centre for International Justice, Submission 271 to Parliamentary Joint Committee on Human Rights, *Inquiry into Australia’s Human Rights Framework* (6 July 2023) <<https://acij.org.au/submission-intl-criminal-justice-victims-rights-missing-pieces-aus-human-rights-framework/>>.

⁴ See, for example, Australian Centre for International Justice, *Afghanistan Inquiry: Assessing the Australian Government’s Response* (29 November 2022) <https://acij.org.au/wp-content/uploads/2022/11/ACIJ-Afghanistan-Inquiry_Assessing-the-Australian-Governments-Response-29-November-2022.pdf>; Australian Centre for International Justice, *Inquiry into Australia’s Engagement in Afghanistan: Submission to the Senate Foreign Affairs, Defence and Trade References Committee* (13 October 2021) <https://acij.org.au/wp-content/uploads/2021/10/Australian-Centre-for-International-Justice-Inquiry-Submission-Australias-Engagment-in-Afghanistan_.pdf>.

3. Australia’s ability to afford participation to victims of international crimes in all appropriate stages of the criminal justice process; and
4. Australia’s ability to provide assistance and support services to victims and survivors of international crimes.

Finally, it should be noted that the protections afforded by the proposed amendments in the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 will only affect victims and survivors of international crimes if proceedings for international crimes actually take place in Australian courts. Australia has a chequered and inconsistent history of international crimes investigation and prosecution. In line with the recommendations set out in ACIJ’s 2023 policy paper ‘Challenging Impunity: Why Australia Needs a Permanent, Specialised International Crimes Unit’⁵ (**Enclosure 2**), the Australian government should consider establishing a permanent, specialised unit to undertake these complex investigations with the goal of more effectively contributing to the global fight to end impunity for international crimes.

Recommendation 2

The Australian government should commit to undertake an inquiry into how the rights of victims of international crimes can be better protected in Australia.

⁵ Australian Centre for International Justice, *Challenging Impunity: Why Australia Needs a Permanent, Specialised International Crimes Unit* (September 2023) < <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>>.