

CHAPTER 5

CONCLUDING REMARKS

5.1 Throughout the conduct of its Inquiry, the Committee has been reminded of the grave responsibility it assumes in deliberating upon legislation dealing with the most egregious of crimes that humans can perpetrate on each other, the intentional destruction of another group of people. Jean-Paul Sartre has, in few words, starkly expressed the horrific meaning of the crime:

The fact of genocide is as old as humanity. To this day there has been no society protected by its structure from committing that crime. Every case of genocide is a product of history and bears the stamp of the society which has given birth to it.¹

5.2 It is no easy task to deal, within the rational construct of law, with the irrationality that perpetrates this crime. A civilised society, however, demands that it have adequate, effective laws to punish and prevent acts of genocide. For this reason, the Committee has approached its task with the principal aim of considering, if Australia does require legislation of this kind, how to arrive at a law that is clear, certain, and workable.

5.3 The Committee has sought to answer the three questions that it posed at the outset of the Inquiry: whether there is a need for this legislation in Australia; whether the Bill meets such a need; and if it does not, how could it be improved upon?

5.4 The Committee has accepted, on the weight of evidence before it, that genocide is not a crime in Australia at the present time. The Committee notes the judgment of the Full Federal Court in *Nulyarimma v Thompson* which stated that:

Leaving aside the matter of intent, it is possible to make a case that there has been conduct by non-indigenous people towards Australian indigenes that falls within at least four of the categories of behaviour mentioned in the Convention definition of 'genocide': killing members of the group; causing serious bodily harm or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and forcibly transferring children of the group to another group.²

5.5 The proposition that genocide has occurred in Australia, or that it could occur, forces us to be vigilant in the future.

1 Patrick Thornberry, *International Law and the Rights of Minorities*, p. 60.

2 Wilcox J in *Nulyarimma*, in *Information Package for the Committee's Inquiry*, p.3

Conclusion

5.6 The Committee has concluded that anti-genocide legislation in Australia is both necessary and timely.

5.7 Australian anti-genocide law should be forward-looking, affirming the principle that Australia abhors the crime of genocide and sets down clear and certain punishment of its perpetrators.

5.8 In this context the Committee has noted, in particular, that a number of witnesses raised compelling arguments about the educative role that anti-genocide legislation ought to adopt in alerting people to, and informing them about, the horrors of genocide. The Committee was reminded by Mr Jeremy Jones of the Executive Council of Australian Jewry, that, in January of this year, Australia joined with other countries in signing the Declaration of the Stockholm International Forum on the Holocaust. That Declaration, in two of its items, stated:

We will promote education about the Holocaust in our schools and universities, in our communities and encourage it in other institutions.

With humanity still scarred by genocide, ethnic cleansing, racism, anti-semitism and xenophobia, the international community shares a solemn responsibility to fight those evils.³

5.9 The Committee holds that a domestic anti-genocide law should be a powerful tool in bringing about change in attitudes towards the crime of genocide in all its manifestations.

5.10 The Bill has opened up the path for discussion of what form appropriate legislation should take. The Committee has concluded that, subject to lawful exercise of the external affairs power under the Constitution, there may be merit in examining those additional matters or alterations contained within the Bill which depart from the text of the Genocide Convention. We have concluded that concrete matters, such as the constitutionality of amending an international treaty, and judicial and administrative implications of the legislation, should be explored more fully by expert agencies. The Committee gave consideration to making suggestions for amendments to the Bill but quickly realised that, in order to do this task properly, much greater resources and expert advice would have to be made available to the Committee.

Recommendation 1

5.11 The Committee recommends that the Parliament formally recognise the need for anti-genocide laws.

3 *Transcript of evidence*, Executive Council of Australian Jewry, p. 29

Recommendation 2

5.12 The Committee recommends that the Bill be referred to the Attorney-General for consideration of the matters identified by the Committee in respect of its contents, and that the Attorney-General report his findings to the Parliament by 5 October 2000.

Senator Jim McKiernan

Chair

June 2000

