War Crimes Amendment Bill 1987

Date Introduced: 28 October 1987
House: House of Representatives
Presented by: The Hon. Lionel Bowen, M.P., Attorney-General

Digest of Bill

Purpose

To allow the prosecution in Australia of Australian citizens or residents suspected of committing 'war crimes' during the Second World War.

Background

The War Crimes Act 1945 (the Principal Act) was enacted to allow for the prosecution, by military courts, of persons suspected of 'war crimes' in the Second World War and subsequent wars. 'War crime' is defined in the Principal Act to be a crime against the laws and usage of war or a crime within the meaning of a statutory order issued by the Board of Inquiry.

Following allegations raised by the A.B.C. in April 1986 that Nazi war criminals had entered Australia, the Acting Special Minister of State on 25 June 1986 appointed Mr. Menzies to investigate the entry of such people. The report, Review of material relating to the entry of suspected war criminals into Australia (the Menzies Report) was forwarded to the Special Minister of State on 28 November 1986. The Menzies Report consisted of a public and confidential report. The public report was first tabled in the Senate on 5 December 1986. Amongst allegations to be investigated were that Australian governments and security forces had knowingly admitted war criminals to Australia, particularly at the request of foreign security forces. Soon after the war, Western security services became concerned with opposition to the USSR as well as the prosecution of alleged Nazi war criminals.

One question of preliminary concern to the Review was the class of crimes that should be investigated. The Menzies Report noted the passage of time since the alleged offences and that the crimes had been committed in an entirely different environment and not against Australians. Accordingly, the Menzies Report suggested that relatively minor crimes, such as collaboration, membership, by itself, of particular military or political organisations (such as the SS) and property crimes, should not be investigated. The Menzies Report also noted the scale of the more
serious crimes and noted that lapse of time or a blameless life after the crime are not a justification for not prosecuting.¹

Before examining the findings of the Menzies Report, the nature of immigration to Australia after the Second World War needs to be examined. The post war era saw the largest immigration to Australia with 1.2 million people migrating to Australia from Europe between 1946 and 1959. Of these, approximately 250,000 were refugees unwilling or unable to return to their native countries and approximately 350,000 were British immigrants.² The majority, therefore, were admitted under the Displaced Persons Scheme. When the immigration scheme commenced, there was no specific security screening process, with the authorities relying on the screening of the International Refugee Organisation and immigration officials. However, in 1948 following press reports of Nazis entering Australia, two military intelligence officers were seconded to the Department of Immigration. The officers arrived in April 1949 and co-operated with British, French and US security services. In June 1950 the first security criteria was issued and, while the actual document cannot be found, the Menzies Report concludes that the criteria appear to have been:

(a) admission to residents of Iron Curtain countries, or persons who had left such countries within 12 months, should be restricted to close relatives or those authorised by the Minister;
(b) persons holding extreme political views, such as members of Communist Parties, or the Nazi Party who had not been cleared by a Denazification Tribunal, were not eligible for entrance;
(c) for Germans, only persons nominated by Australian residents and skilled or suitable for employment in under-manned occupations should be accepted.³

It thus appears that the Cold War, anti-communist view had come to dominate the immigration policy in this area.

In 1951 two ASIO officers were posted to Europe, with other officers following, in addition to the two Military Intelligence officers and the restrictions on immigrants from Iron Curtain countries was slightly eased to allow immigration in exceptional circumstances (such as close relationship with a person in Australia – see page 51 of the Menzies Report). In 1952, immigration policy was changed to allow the entry of low ranking members of the Nazi Party. This change in policy was not made public until 1960.⁴ The security criteria for entry to Australia was further revised in 1955 and the restrictions on certain other members of the Nazi Party and certain security forces, such as the Abwehr (German Military Intelligence), were eased to allow members of such organisations to be considered for admission. In addition, people on the United Nations War Crimes Commission list or the Central Register of War Criminals and Security Suspects could also be considered for admission.⁵

Turning to the findings of the Menzies Report, it was concluded that 'it is more likely than not that a significant number of persons who committed serious war crimes in World War II have entered Australia and some of these are now resident in Australia; certainly the likelihood of
this is such that some action needs to be taken now'. The Menzies Report also rejected the idea that Australian authorities knowingly allowed war criminals to enter Australia under arrangements with foreign intelligence services or that there was any evidence that a foreign intelligence officer misled, or withheld information from, Australian officials. The Menzies Report stated that 'the limitations in numbers and geographical spread of checking staff and gaps in security checking data would, by itself, appear to provide an explanation for the acceptance of these people' (i.e. alleged war criminals). The Menzies Report recommended that the Government should consider whether it would be appropriate to extradite alleged war criminals to the state where the offence was alleged to have been committed or, if this was not considered appropriate, to amend the Principal Act to allow such alleged offenders to be tried in Australia. In a statement to the House of Representatives on the Menzies Report on 24 February 1987, the Attorney-General stated that the Government preferred the latter option.

In addition to the general material contained in the Menzies Report, it contained reviews of certain individuals, as did the confidential report delivered to the Special Minister of State.

Outline

The Bill will apply to all who took part in the Second World War, including Allied forces. The Bill defines 'war' to be the hostilities between 1 September 1939 and 29 October 1945, then defines 'serious crimes' and in turn defines 'war crimes' as serious crimes committed in war. The Bill states the maximum penalties for war crimes and makes it clear that acting on orders is not a defence.

Main Provisions

Clause 6 will repeal sections 3 to 14, the substantive provisions, of the Principal Act and substitute new sections 3 to 17.

Proposed section 5 contains the interpretation provision. 'Person' is defined to be any natural person. War is defined to be a war, whether declared or not; an armed conflict between countries; or a civil war, that occurred between 1 September 1939 and 29 October 1945 and took place in Europe, the Atlantic, North Africa, the Middle East, Asia or the Pacific (including New Guinea and Northern Australia).

'Serious crime' is defined in proposed section 6 to be a crime that, had it occurred in a part of Australia, would have constituted murder, manslaughter, grievous bodily harm, wounding, rape, indecent assault or abduction for immoral purposes, in that part of Australia at that time. In addition, an offence with substantially the same elements as those mentioned above, will be a serious offence as will the deportation of a person to, or internment in, a death camp, slave labour camp or similar place. Conspiring, aiding, attempting or knowingly being concerned with such a deportation or internment will also be a serious crime.
‘War crime’ is defined as a serious crime committed in the course of war hostilities; occupation; in pursuing a policy associated with the conduct of a war; on behalf of a power conducting a war; in the course of political, racial or religious persecution; or with intent to destroy a national, ethnic, racial or political group.

A person will have committed an indictable offence under this Bill if they committed a war crime between 1 September 1939 and 29 October 1945 whether as an individual or as part of an organisation (proposed section 9).

Proposed section 10 deals with punishment. The maximum penalty for any crime involving the willful killing of another is life imprisonment and for other crimes, 25 years.

Only Australian citizens or residents are to be prosecuted under this Bill (proposed section 11).

It will not be a defence that the person accused was obeying orders, but this may be used in determining sentence (proposed section 14). However, it will be a defence that the action was permitted by the laws, customs and usage of war and was not a crime against humanity (proposed section 15).

Proposed section 16 will allow a jury to find an alternative verdict (eg. manslaughter).

References
1. Review of material relating to the entry of suspected war criminals into Australia, p.12.
2. Ibid., p. 33.
3. Ibid., p. 50.
4. Ibid., p. 54.
5. Ibid., p. 56.
6. Ibid., p. 177.
7. Ibid., p. 178.
8. Ibid., p. 182.

For further information, if required, contact the Law and Government Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.