

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE HOUSE OF REPRESENTATIVES

CRIMES (HOSTAGES) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General  
the Hon. Lionel Bowen M.P.)



## CRIMES (HOSTAGES) BILL 1988

### OUTLINE

The purpose of this Bill is to enable Australia to accede to, and implement, the International Convention Against the Taking of Hostages. The effect of the Bill will be to create the offences of -

- . hostage-taking;
- . attempted hostage-taking;
- . participating as an accomplice in hostage-taking or attempted hostage-taking;

and to establish jurisdiction over the offences in a range of circumstances connected with Australia. The offence of hostage-taking is defined in Article 1 of the Convention.

The offence of hostage-taking created by the Bill and the related offences created by the Crimes Act 1914 extend to all proscribed acts committed both within and outside Australia except those specifically excluded by Articles 12 and 13 of the Convention.

### FINANCIAL IMPACT STATEMENT

The proposals put forward in this Bill should have no impact on Government expenditure in the foreseeable future.

### ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum:

Bill:	The Crimes (Hostages) Bill 1988
Convention:	The International Convention Against the Taking of Hostages

## NOTES ON INDIVIDUAL CLAUSES

### Clause 1: Short title

1. Formal.

### Clause 2: Commencement

2. This clause provides for commencement on a day to be fixed by Proclamation so as to allow it to coincide with Australia becoming a party to the Convention.

### Clause 3: Interpretation

3. This clause provides definitions of several expressions used in the Bill which ensure that the legislation will apply across the full range of conduct to which the Convention applies. Subclause (2) provides that expressions used in the Convention and in the Bill have the same meaning. As under the Convention Australia is only obliged to create the offences specifically referred to, subclause (3) excludes the 'related' offences created in sections 6 and 7A of the Crimes Act 1914 which would otherwise operate to create additional offences in relation to the 'primary' offence of hostage-taking under the Bill.

### Clause 4: Act extends to external Territories

4. This clause extends the Bill to all external Territories.

### Clause 5: Application

5. The effect of this clause is that the Bill will cover hostage-taking wherever it occurs and by whomever it is committed.

Clause 6: Effect of this Act on other laws

6. Subclause 6(1) provides that the Bill is not intended to exclude or limit the operation of any other Commonwealth, or any State or Territory laws so that State and Territory offences such as kidnapping will continue to apply as will other Commonwealth offences such as those created by the Crimes (Internationally Protected Persons) Act 1976 and the Crimes at Sea Act 1979.

7. Subclause 6(2) provides protection against a particular type of double jeopardy which is not covered by provisions of the Acts Interpretation Act 1901 or the Crimes Act 1914 ensuring that, where a person has been convicted in a country outside Australia for an offence against the law of the country in respect of any conduct, that person is not liable to be convicted of an offence against the Bill in respect of that conduct.

Clause 7: Meaning of hostage-taking

8. The clause adopts the definition contained in Article 1 of the Convention and spells out the meaning of 'State' used in that article by including all components of a sovereign State.

Clause 8: When hostage-taking an offence

9. This clause makes it an offence to commit an act of hostage-taking defined in the Convention as involving the seizure or detention of a person with the threat to kill, injure or continue to detain the person in order to compel a third person (including a State) to do or abstain from doing an act where it is a condition of the release of the person. The other offences (of attempted hostage-taking and participating as an accomplice of anyone who commits or attempts to commit such an act) which,

under the Convention a State party is obliged to create, will arise by reason of the operation of sections 5 and 7 and subsection 86(1) of the Crimes Act 1914. Each offence will be punishable by a maximum sentence of imprisonment for life.

10. However, subclause (3) provides that Australia will exercise jurisdiction only in relation to those acts which have a prescribed connection with Australia and in relation to which Australia is obliged under the Convention to establish jurisdiction. The connections are where the act occurs in Australia, in the coastal sea of Australia, on board an Australian ship or Australian aircraft and otherwise where it is committed overseas by an Australian citizen or by a person who is, at the time the jurisdiction is exercised, present in Australia. In addition, Australia will have jurisdiction where the alleged offender sought to compel an Australian institution to do or abstain from doing an act as a condition of the release of the hostage.

Clause 9: Person not to be charged in certain circumstances

11. This clause provides that notwithstanding the existence of a right to exercise jurisdiction in relation to an act of a person, that person shall not be charged in Australia in the circumstances set out in Articles 12 or 13 of the Convention. These are firstly, where the act of hostage-taking occurred in the course of armed conflict as defined in the Geneva Conventions of 1949 for the protection of war victims and their Protocols where the parties to those instruments are bound to prosecute or hand over the hostage-taker under those instruments, and secondly, where the act occurred in a single country, the hostage and alleged offender are citizens of that country and the alleged offender is found in that country.

Clause 10: Prosecutions

12. Subclause 10(1) requires the consent in writing of the Attorney-General to be obtained before proceedings for an offence against the Act can take place.

13. Notwithstanding subclause (1), the effect of subclause (2) is to allow preliminary steps to be taken prior to the giving of consent by the Attorney-General to a prosecution under subclause (1).

Clause 11: Venue where offence committed on aircraft

14. This clause provides that where an offence is committed on an aircraft in flight (where it may be difficult for the prosecution to prove exactly where the act occurred) there is a presumption that the offence was not committed in another part of Australia that is a State. The purpose of the clause is to ensure that uncertainty about the State in which an indictment should be brought in order to comply with section 80 of the Constitution does not create an impediment to the prosecution.

Clause 12: Change of venue

15. This clause spells out the steps to be taken where the defendant rebuts the presumption established by virtue of clause 11, and satisfies the judge that the offence, if committed at all, was committed in another part of Australia that is a State and should be tried there.

Clause 13: Evidence of certain matters

16. This clause provides that the Attorney-General may certify that the Convention entered into force at a particular time and

remains in force. The certificate will be prima facie evidence of the status of the Convention in relation to Australia.

Clause 14: Section 38 of the Judiciary Act

17. This clause excludes the operation of section 38 of the Judiciary Act 1903 in relation to matters arising under this Bill, including any questions of interpretation of the Convention. The effect of the provision, therefore, is to remove any impediment to the exercise of jurisdiction under the Bill by State and Territory courts by overcoming any argument that the High Court has exclusive jurisdiction under that section.

Clause 15: Assistance under Article 6 of the Convention

18. This clause relates to the entitlement of a person, other than an Australian citizen, who is taken into custody or in respect of whom other measures are taken to ensure his presence at future criminal or extradition proceedings. The clause gives legislative effect to his entitlements to communicate with, and to be visited by, appropriate consular and diplomatic representatives.

Schedule

19. The Schedule contains the text of the Convention.