

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

GENEVA CONVENTIONS AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General  
The Hon. Michael Duffy, MP)





## GENEVA CONVENTIONS AMENDMENT BILL 1990

### OUTLINE

The purpose of this Bill is to amend the Geneva Conventions Act 1957. The main effect of the Bill is to enable Australian Ratification of Protocol I additional to the Geneva Conventions of 12 August 1949. Protocol I is concerned with the Protection of Victims of International Armed Conflicts and was concluded at Geneva on 10 June 1977. Australia will also ratify Protocol II, but this does not require legislative action prior to ratification.

2. Australia has been a party since 1958 to the Geneva Conventions, which deal with the treatment of the sick and wounded, prisoners of war and civilians in time of war. The Geneva Protocols deal in greater detail with matters such as civil defence, tackle questions of the means and methods of warfare which the framers of the Conventions had not felt themselves able to do, and extend the protections spelt out in the Conventions to non-international conflicts. In particular, the Protocols prohibit indiscriminate attacks on populations and civilian objects and seek to limit attacks to military objectives.

3. The most significant change to the law is to be found in clause 5 of the Bill, which, in effect, incorporates the obligation to punish 'grave breaches', as defined in Protocol 1, into our domestic law. Consequential amendments are made by clause 7, which confers jurisdiction on a court to determine the status of a person claiming to be a prisoner of war, and clause 8, which extends existing protection against misuse of emblems to such identity cards, signs, signals, insignia or uniforms as are prescribed for the purpose of giving effect to the Protocol. Clause 8 also increases the penalty for misuse of prescribed emblems etc. and for misuse of the Red Cross and associated emblems to \$1,000.

#### FINANCIAL IMPACT STATEMENT

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

#### ABBREVIATIONS

5. The following abbreviations are used in this Explanatory Memorandum

Act: Geneva Conventions Act 1957 as amended prior to any amendments effected by this Geneva Conventions Amendment Bill 1990.

Bill: Geneva Conventions Amendment Bill 1990.

Protocol: Protocol I additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts.

NOTES ON INDIVIDUAL CLAUSES

Clause 1:        Short title etc

Clause 2:        Commencement

6. This clause provides for commencement on a day to be fixed by Proclamation.

Clause 3:        Title

7. This clause amends the Title of the Principal Act by adding a reference to the Protocol.

Clause 4:        Interpretation

8. This clause amends section 5 of the Act by adding an appropriate reference to the Protocol and to persons who are prisoners of war for the purposes of the Protocol.

Clause 5:        Punishment of grave breaches of Conventions and Protocol I

9. This clause amends section 7 of the Act by incorporating references to the 'grave breaches' which, under the Protocol, are required to be punished - namely those 'grave breaches' to be found in Article 11 and paragraphs (2), (3) and (4) of Article 85 of the Protocol.

Clause 6:        Proof of application of Convention or Protocol

10. This clause repeals section 8 of the Act and substitutes a new section which provides that where, in prosecutions under Part II of the Act in respect of grave breaches of any of the Conventions or of the Protocol, a question arises as to the circumstances in which the Conventions or Protocol applies, a certificate under the hand of the Minister for Foreign Affairs and Trade certifying as to any relevant matter is to be taken as prima facie evidence of that matter.

Clause 7:        Court may determine whether person is a protected prisoner of war

11. This clause inserts a new Section 10A into the Act. Sub-section 10A(1) provides that a person referred to in paragraph (1) or (2) of Article 45 of the Protocol (i.e. in this context, a person who has taken part in hostilities against Australia, comes within the control of Australian authorities and who claims the status of a prisoner of war) may apply to the Supreme Court of the State or Territory where he or she is held in custody for a declaration that he or she has the status of a protected prisoner of war for the purposes of the Protocol.

12. Sub section 10A(2) provides that, for the purposes of the section, the jurisdiction of the Court is constituted by a single Judge.
13. Sub section 10A(3) provides that, subject to the next succeeding subsection, the jurisdiction of the Court shall be exercised in open court.
14. Sub section 10A(4) provides that the Court may exclude the public or particular persons where the Court is satisfied that not to do so would be contrary to the interests of justice or not in the public interest.

Clause 8: Use of Red Cross and other emblems, signs, signals, identity cards, insignia and uniforms

15. This clause amends Section 15 of the Act by inserting a new paragraph 15(1)(f) which provides protection against misuse of such emblems, identity cards, signs, signals, insignia or uniforms as are prescribed for the purposes of giving effect to the Protocol.
16. This clause also amends Section 15 of the Act to provide for an increase in the penalty to \$1,000.

Clause 9: Schedule 5

17. This clause amends the Act by the inclusion of the text of the Protocol as Schedule 1 to the Act.

Clause 10: Formal amendments

18. This clause inserts a schedule of formal amendments to the Act. These amendments are of a drafting nature.



