

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

INTERNATIONAL WAR CRIMES TRIBUNAL BILL 1994

FURTHER SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government  
(including one amendment to be moved in substitution for an amendment  
made by the House of Representatives)

(Circulated by authority of the Attorney-General,  
the Honourable Michael Lavarch MP)





# INTERNATIONAL WAR CRIMES TRIBUNAL BILL 1994

## GENERAL OUTLINE

The amendments have only two purposes. One purpose is to extend the Bill so that it may apply to an additional Tribunal. The second purpose is to make minor amendments which are consequential on amendments made by the House of Representatives.

The present form of the Bill will enable Australia to meet its obligations in relation to the 'Former Yugoslavia Tribunal' which was established by the United Nations Security Council. (Resolution 827 established the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991).

On 8 November 1994 the United Nations Security Council adopted Resolution 955 which established the 'Rwanda Tribunal' (International Tribunal for the purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and in neighbouring States between 1 January 1994 and 31 December 1994).

Both Resolutions create immediately binding obligations on Member States of the United Nations, including Australia, to co-operate and comply with requests for assistance from the Tribunals. The obligations in relation to both Tribunals are virtually identical. The amendments will make minor drafting changes to enable the Bill to apply to both Tribunals.

The second purpose of the amendments is to replace the word 'exceptional' with the word 'special' in a number of places in the Bill. These amendments are consequential on amendments previously made as a result of an Advisory Report by the House of Representatives Standing Committee on Legal and Constitutional Affairs. The Committee recommended that the term 'exceptional circumstances' be replaced by 'special circumstances' in various provisions in the Bill. Certain amendments were made in the House of Representatives (see Supplementary Explanatory Memorandum dealing with the amendments made by the House of Representatives). However, some occurrences of the term 'exceptional circumstances' were overlooked, resulting in an inconsistent use of the terms 'exceptional circumstances' and 'special circumstances' throughout the Bill. The amendments will simply overcome this deficiency.

### **FINANCIAL IMPACT**

The amendments are not expected to have any financial impact on Government expenditure.

## NOTES ON CLAUSES OF AMENDMENTS

### Amendments 1 to 18, 20 to 24, 26 to 28, 30, 32, 34 to 39, 41 to 49, and 51 to 60

1. These amendments are all minor drafting amendments with the purpose of extending the Bill to the Rwanda Tribunal.
2. There is another amendment with the same effect and purpose (see the Amendment to be moved on behalf of the Government in substitution for Amendment number 24 made by the House of Representatives).

### Amendments 19, 25, 29, 31, 33, 40 and 50

3. These amendments substitute the term 'special circumstances' for 'exceptional circumstances'. The amendments are consequential on amendments made by the House of Representatives (see Amendments 7, 11 and 12 in the Schedule of Amendments made by the House of Representatives), and will result in consistency in terminology.

### Amendment in substitution for Amendment number 24 made by the House of Representatives

4. This amendment has the same effect and purpose as Amendments 1 to 18, 20 to 24, etc. It is simply a drafting change necessitated by the extension of the Bill to the Rwanda Tribunal.
5. The effect of House of Representatives' Amendment number 24 is to insert a note making it clear that forms of assistance other than those provided for in the Bill may be provided to the Tribunal outside the proposed Act. The substituted amendment will achieve the same result, but it uses the word 'Tribunals' rather than 'Tribunal'.





