War Crimes Repeal Bill 1989
(Private Senator's Bill)

Date Introduced: 6 September 1989
House: Senate
Presented by: Senator David Hamer

Digest of Bill

Purpose
To repeal the War Crimes Act 1945.

Background
The War Crimes Act 1945 (the Principal Act) provides for the prosecution in Australia of Australian citizens, Australian residents, British subjects, or a citizen of a country allied or associated with Australia who committed war crimes in Europe during the Second World War. The Principal Act was recently amended following considerable controversy about alleged Nazis and Nazi sympathisers living in Australia who have managed to conceal their past.¹

On 28 October 1987, the Government introduced the War Crimes Amendment Bill 1987. The Bill provided for the prosecution in Australia of Australian citizens or residents suspected of committing war crimes during the Second World War. 'War' was defined to include an armed conflict that took place in Europe, the Atlantic, North Africa, the Middle East, Asia or the Pacific.

The Bill was passed in December 1988 after being amended in the Senate. The Senate amended the Bill so that the preamble included the words 'it is also essential in the interests of justice that persons so accused be given a fair trial with all the safeguards for accused persons in trials in those courts, having particular regard to matters such as the gravity of the allegations and the lapse of time since the alleged crimes'. The Bill also was amended to provide that nothing in the Bill should be taken to exclude, limit or otherwise prejudice the application of the normal rules of evidence and procedure or any of the powers of a court in respect of proceedings, including powers to take action to prevent an abuse of process. Another amendment provided that where an accused person satisfied the judge on the balance of probabilities that they were unable to obtain evidence that they would, but for the lapse of time or some other reason beyond their control, have been able to obtain, or that their inability to obtain that evidence had substantially prejudiced the
conduct of their defence, or where the interests of justice required the making of an order, the judge may make such order as they think appropriate for a stay of proceedings. The definition of 'war' was also amended to limit the Bills coverage to war crimes committed in Europe.

These amendments represented the Government's response to concerns expressed by the Opposition, the Democrats and others, that the Bill in its original form, could not ensure fair trials of persons accused of war crimes more than 40 years ago and the need to reach an accommodation with the Opposition in order to ensure the Bill's passage through Parliament.

Main Provisions
Clause 3 will repeal the War Crimes Act 1945.

References
1. Refer to the Digest for the War Crimes Amendment Bill 1987.

For further information, if required, contact the Defence Group.

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                       Legislative Research Service

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

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