



Crimes (Torture) Act 1988

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Comments This Act received Royal Assent on 26 December 1988 and entered into force on 14 February 1989. For the latest consolidated version of this Act click [here](#). Please note that the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment Punishment in the Schedule is not reproduced here.

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LONG TITLE

An Act to give effect to certain provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and for related purposes

SECT 1 Short title

This Act may be cited as the Crimes (Torture) Act 1988.

SECT 2 Commencement

This Act commences on a day to be fixed by Proclamation.

SECT 3 Interpretation

(1) In this Act, unless the contrary intention appears:

"act of torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

(a) for such purposes as:

(i) obtaining from the person or from a third person information or a confession;

(ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed; or

(iii) intimidating or coercing the person or a third person; or

(b) for any reason based on discrimination of any kind;

but does not include any such act arising only from inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the International Covenant on Civil and Political Rights (being the Covenant a copy of the English text of which is set out in Schedule 2 to the Human Rights and Equal Opportunity Commission Act 1986);

"Australia" includes the external Territories;

"Convention" means the Convention Against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984, a copy of the English text of which is set out in the Schedule.

(2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the same meaning as it has in the Convention.

SECT 4 Application

This Act extends to all external Territories and has extra-territorial operation according to its tenor.

SECT 5 Effect of this Act on other laws

(1) Except as provided by this section, this Act is not intended to exclude or limit the operation of any other law of the commonwealth or any law of a state or Territory.

(2) Where any conduct by a person is both an offence against this Act and an offence against any other law referred to in subsection (1) and the person is convicted or acquitted of either of those offences, that person is not liable to be convicted of the other of those offences.

(3) Where a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, that person is not liable to be convicted of an offence against this Act in respect of that conduct.

SECT 6 Offence of torture

(1) Where:

(a) at any time after the commencement of this Act, a person who:

(i) is a public official or is acting in an official capacity; or

(ii) is acting at the instigation, or with the consent or acquiescence, of a public official or person acting in an official capacity;

does outside Australia an act that is an act of torture; and

(b) that act, if done by the person at that time in a part of Australia, would constitute an offence against the law then in force in that part of Australia;

the person is guilty of an offence against this Act, punishable, upon conviction, by the same penalty as would be applicable if the person were found guilty of the offence referred to in paragraph (b).

(2) In determining for the purposes of subsection (1) whether or not an act is or was, under the law in force at a particular time in a part of Australia, an offence of a particular kind, regard shall be had to any defence under that law that can be or could have been established in a proceeding for the offence.

SECT 7 Only Australian citizens or persons present in Australia may be prosecuted

A person shall not be charged with an offence against this Act unless the person:

- (a) is an Australian citizen; or
- (b) is present in Australia.

SECT 8 Prosecution

(1) Proceedings for an offence against this Act shall not take place except with the consent in writing of the Attorney-General.

(2) Notwithstanding that a consent in accordance with subsection (1) has not been given in relation to an offence against this Act:

- (a) a person may be arrested for the offence, and a warrant for the arrest of a person for the offence may be issued and executed;
- (b) a person may be charged with the offence; and
- (c) a person so charged may be remanded in custody or on bail;

but no further step in proceedings referred to in subsection (1) shall be taken until such a consent has been given.

(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

SECT 9 Jurisdiction of courts and choice of law

(1) Where a person is charged with an offence against this Act, then, for the purposes of:

- (a) determining whether a court of a State or Territory has jurisdiction in relation to the offence;
- (b) an exercise of jurisdiction by such a court in relation to the offence;
- (c) a proceeding connected with such an exercise of jurisdiction; and
- (d) an appeal arising out of, or out of a proceeding connected with, such an exercise of jurisdiction;

this Act has effect, in relation to an act that is, or is alleged to be, the offence, as if a reference in subsection 6 (1) or section 10 to a part of Australia were a reference to that State or Territory.

(2)Where:

(a)it is sought in a proceeding for an offence against this Act to establish for the purposes of subsection 6 (2) that a particular defence could have been established in a proceeding (in this subsection called the "other proceeding") for an offence; and

(b)in the other proceeding, the onus of establishing the defence would have been on the accused;

then, in the first-mentioned proceeding, the onus of establishing that the defence could have been established in the other proceeding lies on the accused.

SECT 10 Alternative

(1)Where:

(a)a person is charged with an offence against this Act;

(b)the offence is alleged to be an act that, under the law in force in a part of Australia at the time (in this subsection called the "relevant time") when the act was alleged to have been done, would have constituted an offence of a particular kind if it had been done in that part of Australia at the relevant time;

(c)on the person's trial for the offence, the jury:

(i)is not satisfied that the person is guilty of the offence charged; and

(ii)is satisfied that the person is guilty of a different offence against this Act (in this section called the "alternative offence") because the person has done an act that, under the law in force in that part of Australia at the relevant time, would, if it had been done in that part of Australia at that time, have constituted an offence (in this section called the "local offence found to have been proved") of a kind different from the kind of offence referred to in paragraph (b); and

(d)by virtue of the law in force in that part of Australia at the relevant time or at the time of the trial, a person charged with an offence of the kind referred to in paragraph (b) could in certain circumstances be found not guilty of the last-mentioned offence but guilty of an offence of the kind referred to in subparagraph (c) (ii);

the jury may find the person not guilty of the offence charged but guilty of the alternative offence.

(2)If the jury finds the person guilty of an offence under this Act in the circumstances referred to in subsection (1), it shall, when returning its verdict, tell the judge that it is satisfied as mentioned in subparagraph (1) (c) (ii) and specify to the judge the kind of local offence found to have been proved.

SECT 11 No defence of exceptional circumstances or superior orders

It is not a defence in a proceeding for an offence against this Act that;

(a)the act constituting the offence was done out of necessity arising from the existence of a state of war, a threat of war, internal political instability, a public emergency or any other exceptional circumstance; or

(b) in doing the act constituting the offence the accused acted under orders of a superior officer or public authority;

but the circumstances referred to in paragraphs (a) and (b) may, if the accused is convicted of the offence, be taken into account in determining the proper sentence.

SECT 12 Section 38 of Judiciary Act

A matter arising under this Act, including a question of interpretation of the Convention for the purposes of this Act, shall, for the purposes of section 38 of the Judiciary Act 1903, be deemed not to be a matter arising directly under a treaty.

SECT 13 Assistance under article 6 of Convention

A person, other than an Australian citizen, who is in custody in respect of an offence that is alleged to have been committed against this Act is entitled to the assistance referred to in paragraph 3 of Article 6 of the Convention.

SCHEDULE

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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