

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Crimes Legislation Amendment (Torture
Prohibition and Death Penalty Abolition)
Bill 2009**

No. , 2009

(Attorney-General)

**A Bill for an Act to amend the *Criminal Code Act
1995* and the *Death Penalty Abolition Act 1973*, and
for related purposes**

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1 **A Bill for an Act to amend the *Criminal Code Act***
2 ***1995 and the Death Penalty Abolition Act 1973, and***
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Crimes Legislation Amendment*
7 (*Torture Prohibition and Death Penalty Abolition*) Act 2009.

8 **2 Commencement**

9 This Act commences on the day after this Act receives the Royal
10 Assent.

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3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or

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repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect

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according to its terms.

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2 **Schedule 1—Amendments and repeal relating**
3 **to offence of torture**

4 **Part 1—Main amendment**

5 *Criminal Code Act 1995*

6 **1 At the end of Chapter 8 of the *Criminal Code***

7 Add:

8 **Division 274—Torture**

9 **274.1 Definitions**

10 (1) In this Division:

11 ***Convention*** means the Convention Against Torture and Other
12 Cruel, Inhuman or Degrading Treatment or Punishment adopted by
13 the General Assembly of the United Nations at New York on
14 10 December 1984.

15 Note: The text of the Convention is set out in Australian Treaty Series 1989
16 No. 21 ([1989] ATS 21). In 2009, the text of a Convention in the
17 Australian Treaty Series was accessible through the Australian
18 Treaties Library on the AustLII website (www.austlii.edu.au).

19 (2) An expression that is used both in this Division and in the
20 Convention (whether or not a particular meaning is given to it by
21 the Convention) has, in this Division, the same meaning as it has in
22 the Convention.

23 **274.2 Torture**

24 (1) A person (the ***perpetrator***) commits an offence if the perpetrator:

25 (a) engages in conduct that inflicts severe physical or mental
26 pain or suffering on a person (the ***victim***); and

27 (b) the conduct is engaged in:

28 (i) for the purpose of obtaining from the victim or from a
29 third person information or a confession; or

Schedule 1 Amendments and repeal relating to offence of torture

Part 1 Main amendment

- 1 (ii) for the purpose of punishing the victim for an act which
2 the victim or a third person has committed or is
3 suspected of having committed; or
4 (iii) for the purpose of intimidating or coercing the victim or
5 a third person; or
6 (iv) for a purpose related to a purpose mentioned in
7 subparagraph (i), (ii) or (iii); and
8 (c) the perpetrator engages in the conduct:
9 (i) in the capacity of a public official; or
10 (ii) acting in an official capacity; or
11 (iii) acting at the instigation, or with the consent or
12 acquiescence, of a public official or other person acting
13 in an official capacity.

14 Penalty: Imprisonment for 20 years.

- 15 (2) A person (the *perpetrator*) commits an offence if the perpetrator:
16 (a) engages in conduct that inflicts severe physical or mental
17 pain or suffering on a person; and
18 (b) the conduct is engaged in for any reason based on
19 discrimination of any kind; and
20 (c) the perpetrator engages in the conduct:
21 (i) in the capacity of a public official; or
22 (ii) acting in an official capacity; or
23 (iii) acting at the instigation, or with the consent or
24 acquiescence, of a public official or other person acting
25 in an official capacity.

26 Penalty: Imprisonment for 20 years.

- 27 (3) Absolute liability applies to paragraphs (1)(c) and (2)(c).

28 Note: For absolute liability, see section 6.2.

- 29 (4) Subsections (1) and (2) do not apply to conduct arising only from,
30 inherent in or incidental to lawful sanctions that are not
31 inconsistent with the Articles of the International Covenant on
32 Civil and Political Rights (a copy of the English text of which is set
33 out in Schedule 2 to the *Australian Human Rights Commission Act*
34 *1986*).

- 1 (5) Section 15.4 (extended geographical jurisdiction—category D)
2 applies to an offence against subsection (1) or (2).

3 **274.3 Prosecutions**

- 4 (1) Proceedings for an offence against this Division, where the conduct
5 constituting the alleged offence occurs wholly outside Australia,
6 must not take place except with the consent in writing of the
7 Attorney-General.
- 8 (2) Even though a consent in accordance with subsection (1) has not
9 been given in relation to an offence against this Division:
10 (a) a person may be arrested for the offence, and a warrant for
11 the arrest of a person for the offence may be issued and
12 executed; and
13 (b) a person may be charged with the offence; and
14 (c) a person so charged may be remanded in custody or on bail;
15 but no further step in proceedings referred to in subsection (1) is to
16 be taken until such a consent has been given.
- 17 (3) Subsection (2) does not prevent the discharge of the accused if
18 proceedings are not continued within a reasonable time.

19 **274.4 No defence of exceptional circumstances or superior orders**

- 20 It is not a defence in a proceeding for an offence under this
21 Division that:
22 (a) the conduct constituting the offence was done out of
23 necessity arising from the existence of a state of war, a threat
24 of war, internal political instability, a public emergency or
25 any other exceptional circumstance; or
26 (b) in engaging in the conduct constituting the offence the
27 accused acted under orders of a superior officer or public
28 authority;
29 but the circumstances referred to in paragraphs (a) and (b) may, if
30 the accused is convicted of the offence, be taken into account in
31 determining the proper sentence.

32 **274.5 Jurisdiction of State/Territory courts preserved**

- 33 For the purposes of section 38 of the *Judiciary Act 1903*, a matter
34 arising under this Division, including a question of interpretation of
-

Schedule 1 Amendments and repeal relating to offence of torture

Part 1 Main amendment

1 the Convention, is taken not to be a matter arising directly under a
2 treaty.

3 **274.6 Concurrent operation intended**

4 This Division is not intended to exclude or limit the concurrent
5 operation of any other law of the Commonwealth or any law of a
6 State or Territory.

7 **274.7 Double jeopardy**

8 If a person has been convicted or acquitted in a country outside
9 Australia of an offence against the law of that country in respect of
10 any conduct, the person cannot be convicted of an offence under
11 this Division in respect of that conduct.

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2 **Part 2—Other amendments**

3 ***Criminal Code Act 1995***

4 **2 Paragraph 71.13(1)(a) of the *Criminal Code***

5 Omit “torture”, substitute “the deliberate and systematic infliction of
6 severe pain over a period of time”.

7 **3 Subsection 71.13(4) of the *Criminal Code* (definition of
8 *torture*)**

9 Repeal the definition.

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2 **Part 3—Repeal**

3 ***Crimes (Torture) Act 1988***

4 **4 The whole of the Act**

5 Repeal the Act.

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Schedule 2—Amendments relating to the abolition of the death penalty

Death Penalty Abolition Act 1973

1 Title

After “Commonwealth”, insert “, of the States and of the Territories,”.

2 Subsection 3(4)

Repeal the subsection, substitute:

- (3) Section 6 also applies in relation to, and in relation to offences under, the laws of the States.
- (4) This Act applies in relation to offences referred to in subsections (2) and (3) committed before, on or after the commencement of this Act.

3 At the end of section 4

Add “referred to in subsection 3(2)”.

4 Section 5

Omit “in relation to which this Act applies”, substitute “referred to in subsection 3(2)”.

5 At the end of the Act

Add:

6 Death penalty must not be imposed

The punishment of death must not be imposed as the penalty for any offence referred to in subsection 3(2) or (3).