

# CRIMES (INTERNATIONALLY PROTECTED PERSONS) ACT 1976

## No. 8 of 1977

An Act relating to the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Crimes (Internationally Protected Persons) Act 1976*.<sup>1</sup> Short title.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commencement.

(2) Section 11 shall come into operation on a date to be fixed by Proclamation, being a date not earlier than the date on which the Convention enters into force for Australia.

3. (1) In this Act, unless the contrary intention appears— Interpretation.  
“Australia” includes—

- (a) all the Territories; and
- (b) the Australian coastal sea;

“Australian aircraft” means—

- (a) an aircraft registered or required to be registered in accordance with the Air Navigation Regulations as an Australian aircraft;
- (b) an aircraft that is owned by, or is in the possession or control of, the Commonwealth or an authority of the Commonwealth (including Qantas Airways Limited); or
- (c) an aircraft of any part of the Defence Force, including an aircraft that is being commanded or piloted by a member of that Force in the course of his duties as such a member;

“Australian coastal sea” means any sea or waters the sovereignty in respect of which is declared by the *Seas and Submerged Lands Act 1973* to be vested in the Crown in right of the Commonwealth, and includes the airspace over, and the seabed and subsoil beneath, any such sea or waters;

“Australian ship” means—

- (a) a ship registered in Australia; or
- (b) a ship that belongs to an arm of the Defence Force;

“Convention” means the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, that was opened for signature at New York on 14 December 1973, a copy of the English text of which is set out in the Schedule.

(2) For the purposes of this Act, the definition of “internationally protected person” in paragraph 1 of article 1 of the Convention shall be read as if the reference in that definition to a Head of State included, in relation to Australia, the Governor-General.

(3) Except so far as the contrary intention appears, an expression that is used in this Act and in the Convention has, in this Act, the same meaning as in the Convention, whether or not a particular meaning is expressly assigned to it by the Convention and whether or not the Convention has entered into force in pursuance of paragraph 1 of article 17 of the Convention.

Extension of Act to Territories.

4. This Act extends to every Territory.

Extra-territorial operation of Act.

5. This Act extends, except so far as the contrary intention appears—  
 (a) to acts, matters and things outside Australia, whether or not in or over a foreign country; and  
 (b) to all persons, irrespective of their nationality or citizenship.

Effect of this Act on other laws.

6. (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 sub-section (1) and that person is convicted of either of those offences, he is not liable to be convicted of the other of those offences.

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

Ratification of Convention.

7. Approval is given to the ratification by Australia of the Convention.

Offences.

8. (1) A person who murders or kidnaps an internationally protected person is guilty of an offence against this Act and is punishable on conviction by imprisonment for life.

(2) A person who commits any other attack upon the person or liberty of an internationally protected person is guilty of an offence against this Act and is punishable on conviction—

(a) where the attack causes death—by imprisonment for life;

- (b) where the attack causes grievous bodily harm—by imprisonment for a period not exceeding 14 years; or
- (c) in any other case—by imprisonment for a period not exceeding 7 years.

(3) A person who commits a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person, being an attack likely to endanger the person or liberty of any internationally protected person, is guilty of an offence against this Act and is punishable on conviction by imprisonment for a period not exceeding 14 years.

(4) A person who threatens to do anything that would constitute an offence against sub-section (1), (2) or (3) is guilty of an offence against this Act and is punishable on conviction by imprisonment for a period not exceeding 7 years.

(5) For the purposes of this Act, an offence created by section 5 or 7 of the *Crimes Act 1914-1975* shall, to the extent that it relates to an offence against sub-section (1), (2), (3) or (4), be deemed to be an offence against this Act.

(6) Where, on the trial of a person for an offence against sub-section (1), the evidence does not establish the commission by him of such an offence but establishes the commission by him of an offence against sub-section (2), he may be found guilty of the last-mentioned offence.

(7) For the purposes of this section—

- (a) kidnapping a person consists of leading, taking or enticing the person away, or detaining the person, with intent to hold him for ransom or as a hostage or otherwise for the purpose of inducing compliance with any demand or obtaining any advantage;
- (b) murdering a person consists of causing the death of that person in circumstances in which the person causing the death would be guilty of murder according to the law in force in the Australian Capital Territory at the time of the conduct causing the death, whether or not the conduct took place in that Territory; and
- (c) a reference to an attack upon the person of an internationally protected person shall be read as including a reference to assaulting an internationally protected person or to administering or applying to an internationally protected person, or causing an internationally protected person to take, a poison, drug or other destructive or noxious substance or thing.

9. It is a defence to a prosecution for an offence against this Act if the defendant proves that he did not know, and had no reason to suspect, that the person in relation to whom, or in relation to whose premises, accommodation or means of transport, the offence is alleged to have been committed was— Defence to prosecution.

- (a) a person referred to in sub-paragraph 1 (a) of article 1 of the Convention; or
- (b) a representative or official of a state or an official or other agent of an international organization of an inter-governmental character or a member of the family of such a person forming part of his household.

Liability to prosecution.

**10.** A person is not liable to be charged for an offence against this Act unless—

- (a) the offence is committed in Australia or on an Australian ship or Australian aircraft; or
- (b) the offence is committed after the Convention enters into force for Australia and the person is found in Australia or Australia is required by article 3 of the Convention to establish its jurisdiction over the offence.

Taking offenders into custody.

**11. (1)** In this section, “constable” means a member of the Commonwealth Police Force or of a police force of a State or Territory.

(2) Where a constable has reasonable grounds to suspect that a person who is in Australia has committed, outside Australia, an offence against this Act, the constable—

- (a) may take the person into custody for the purpose of being dealt with in accordance with this section; and
- (b) shall cause the person so taken into custody—
  - (i) to be brought before a Magistrate as soon as practicable to be dealt with in accordance with this section; and
  - (ii) to be held in custody until he can be so brought before a Magistrate.

(3) Where—

- (a) a person is brought or appears before a Magistrate in accordance with sub-section (2) or on the expiration of a period of remand fixed under sub-section (4) or in pursuance of a warrant issued under sub-section (6); and
- (b) there is produced to the Magistrate a warrant for the apprehension of the person for the purposes of criminal or extradition proceedings in connexion with an offence against this Act or any other offence,

the Magistrate shall make such order as is appropriate to facilitate the execution of the warrant.

(4) Where, in the circumstances referred to in paragraph (3) (a), a warrant referred to in paragraph (3) (b) is not produced to the Magistrate, the Magistrate shall—

- (a) if he is satisfied that further time is reasonably required for determining whether criminal or extradition proceedings should

be instituted against the person—remand, or further remand, the person, either in custody or on bail, for a period not exceeding 7 days; or

- (b) if he is not so satisfied—order that the person be released from custody.

(5) Where a Magistrate remands, or further remands, a person in custody under sub-section (4), the person shall, at the expiration of the period of remand or further remand, be brought before that Magistrate or another Magistrate.

(6) If a person who has been remanded on bail under sub-section (4) does not appear before a Magistrate at the time and place mentioned in the recognizance entered into by him on being granted bail, a Magistrate may issue a warrant for the apprehension of the person and for bringing him before a Magistrate.

(7) A person, other than an Australian citizen, who is taken into custody under sub-section (2) is entitled to the rights conferred by paragraph 2 of article 6 of the Convention.

- (8) The laws in force in a State or Territory with respect to—
- (a) the conditions under which persons charged with offences against the law of that State or Territory are held in custody on remand;
  - (b) the treatment of such persons while so held in custody; and
  - (c) the transfer of such persons from one prison or other place of confinement to another,

apply, so far as they are capable of application, in relation to persons who are held in custody on remand, in accordance with an order under this section, in the prisons or other places of confinement of the State or Territory.

(9) Nothing in this section prevents the arrest of a person for an offence against this Act in accordance with any other law.

**12.** (1) Subject to sub-section (2), a prosecution for an offence Prosecutions. against this Act shall be on indictment.

(2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for his commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.

(3) Proceedings for the commitment of a person for trial on indictment for an offence against this Act shall not be instituted except with the consent in writing of the Attorney-General or a person authorized by the Attorney-General, by instrument in writing, to give such consents.

(4) Notwithstanding that a consent has not been given in relation to the offence in accordance with sub-section (3)—

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

but no further step in proceedings referred to in sub-section (3) shall be taken in relation to the offence until such a consent has been given.

(5) Nothing in sub-section (4) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

Evidence  
relating to  
Convention.

13. (1) The Minister may, by instrument published in the *Gazette*, declare—

- (a) that the Convention entered into force for a specified country on a specified date; or
- (b) that a specified country has denounced the Convention and that the denunciation took effect on a specified date.

(2) Subject to sub-section (3), a copy of the *Gazette* containing an instrument purporting to be an instrument making a declaration in accordance with paragraph (1) (a) is, upon mere production, admissible in any proceedings as *prima facie* evidence of the matters declared by the instrument and of the fact that the specified country has not denounced the Convention.

(3) A copy of the *Gazette* containing an instrument purporting to be an instrument making a declaration in accordance with paragraph (1) (b) is, upon mere production, admissible in any proceedings as *prima facie* evidence of the matters declared by the instrument.

(4) A reference in this section to a country includes a reference to Australia.

Certificates  
by Minister.

14. (1) The Minister may give a certificate in writing certifying any fact relevant to the question whether a person is, or was at any time or in respect of any period, an internationally protected person.

(2) A document purporting to be a certificate given under sub-section (1) is, upon mere production, admissible in any proceedings as *prima facie* evidence of the facts stated therein.

Jurisdiction  
of courts.

15. (1) A provision of the *Judiciary Act* 1903-1973 by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

(2) Subject to section 80 of the Constitution, where a person has committed an offence against this Act outside a Territory and is found in, or brought into, the Territory, a court of the Territory has the same jurisdiction in respect of the offence as it would have if the offence had been committed in the Territory.

(3) The trial of an offence against this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

16. 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* 1903-1973, be deemed not to be a matter arising directly under a treaty. Section 38 of  
Judiciary  
Act.

17. The Governor-General may make regulations declaring that persons included in a specified class of representatives or officials of Australia or of any other state or states, or in a specified class of officials or other agents of a specified international organization of an inter-governmental character, are, in specified circumstances to be taken for the purposes of this Act to be included in the definition of "internationally protected person" in paragraph 1 of article 1 of the Convention and, where regulations so made are applicable to a person, members of his family forming part of his household shall also be taken, for the purposes of this Act, to be so included. Regulations  
specifying  
classes of  
inter-  
nationally  
protected  
persons.

---

## SCHEDULE

Section 3

### CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS

*The States Parties to this Convention,*

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

*Considering* that crimes against diplomatic agents and other internationally protected persons jeopardising the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for co-operation among States,

*Believing* that the commission of such crimes is a matter of grave concern to the international community,

*Convinced* that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

*Have agreed* as follows:

#### ARTICLE 1

For the purposes of this Convention:

1. "internationally protected person" means:

- (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

## SCHEDULE—continued

- (b) any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

2. “alleged offender” means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

## ARTICLE 2

1. The intentional commission of:

- (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
- (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack; and
- (e) an act constituting participation as an accomplice in any such attack

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

## ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

- (a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State;
- (c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

## ARTICLE 4

States Parties shall co-operate in the prevention of the crimes set forth in article 2, particularly by:

- (a) taking all practicable measures to prevent preparation in their respective territories for the commission of those crimes within or outside their territories;
- (b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

## ARTICLE 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.



## SCHEDULE—continued

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

## ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the crime was committed;
- (b) the State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;
- (c) the State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;
- (d) all other States concerned; and
- (e) the international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and
- (b) to be visited by a representative of that State.

## ARTICLE 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

## ARTICLE 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

## ARTICLE 9

Any person regarding whom proceedings are being carried out in connexion with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.

## SCHEDULE—continued

## ARTICLE 10

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the crimes set forth in article 2, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

## ARTICLE 11

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

## ARTICLE 12

The provisions of this Convention shall not affect the applications of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those Treaties.

## ARTICLE 13

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

## ARTICLE 14

This Convention shall be open for signature by all States, until 31 December 1974 at United Nations Headquarters in New York.

## ARTICLE 15

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

## ARTICLE 16

This Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## ARTICLE 17

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

## ARTICLE 18

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect six months following the date on which notification is received by the Secretary-General of the United Nations.

## SCHEDULE—continued

## ARTICLE 19

The Secretary-General of the United Nations shall inform all States, *inter alia*:

- (a) of signatures to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 14, 15 and 16 and of notifications made under article 18.
- (b) of the date on which this Convention will enter into force in accordance with article 17.

## ARTICLE 20

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 14 December 1973.

---

**NOTE**

1. Act No. 8, 1977; assented to 28 February 1977.