



AFP National Guideline on offshore situations involving potential torture or cruel, inhuman or degrading treatment or punishment

1. Disclosure and compliance

This document is classified **For Official Use Only** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on the disclosure of information](#).

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Acronyms

AFP	Australian Federal Police
DFAT	Department of Foreign Affairs and Trade
PROMIS	Police Real-time Online Management Information System
TCIDTP	Torture or cruel, inhuman or degrading treatment or punishment

3. Definitions

Appointee – is defined in s. 4 of the [Australian Federal Police Act 1979](#) (Cth).

Australian – means a person who is an Australian citizen.

Cruel, inhuman or degrading treatment or punishment – includes treatment of the type prohibited under s. 23Q of the [Crimes Act 1914](#) (Cth).

Foreign authorities – means law enforcement, foreign security agencies, foreign intelligence agencies and/or any agent of a foreign government.

Torture – is defined in Division 274 of the [Criminal Code Act 1995](#) (Cth), it includes severe physical or mental pain or suffering.

4. Guideline authority

This guideline was issued by the Commissioner using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth).

5. Introduction

The AFP does not tolerate, participate in, encourage or condone the use of torture or cruel, inhuman or degrading treatment or punishment (TCIDTP) of any individual for any purpose.

This guideline outlines the framework for dealing with foreign authorities:

- where an AFP appointee becomes aware an Australian detained offshore has been, or is likely to be, subject to TCIDTP
- appointee involvement in interviews of a detained person offshore in situations where there is a substantial, real and not remote risk TCIDTP has, or is likely, to occur
- disclosing information about Australians to foreign authorities where there is a substantial, real and not remote risk of TCIDTP.

This guideline exists within broader national and international legal and policy frameworks which impose general prohibitions on TCIDTP. This guideline is only intended to provide specific operational guidance to AFP appointees.

6. Reporting TCIDTP of Australians detained offshore

Appointees who in the course of carrying out AFP functions become aware of credible information that an Australian detained by a foreign authority offshore has been, or is likely to be, subject to TCIDTP, must advise the relevant AFP Post and Manager International as soon as practicable. The Senior Liaison Officer at Post is the AFP point of contact in country. The appointee should include where known:

- full name of the detained Australian
- location of the detained Australian
- reason for their detention
- name of the detaining foreign authority
- allegations made and date of any alleged mistreatment
- details of any other reporting of the TCIDTP (including media reporting)
- what action has been taken by AFP or other Australian agencies
- how and by whom the TCIDTP was reported to the appointee.

The AFP Senior Liaison Officer must, as soon as practicable, report the likelihood of an Australian detained offshore being subject to, or likely to be subject to, TCIDTP, to the Department of Foreign Affairs and Trade (DFAT) Head of Mission in country.

Details of the alleged TCIDTP, and AFP actions and determinations must be recorded in PROMIS as a critical decision.

7. Involvement in interviews

This guideline applies to any appointee who conducts or participates in an interview offshore, whether or not Part 1C of the [Crimes Act 1914](#) (Cth) applies.

Appointees considering conducting an interview where there is a substantial, real and not remote risk that a person has been, or is likely to be, subject to TCIDTP must:

- report considerations for such participation in the interview to Manager International
- record details of the request and management determinations on PROMIS as a critical decision.

Appointees considering attendance at and/or involvement in an interview conducted by another agency of a person detained offshore where there is a substantial, real and not remote risk that person has been, or is likely to be, subject to TCIDTP must:

- report considerations for such attendance or involvement in the interview to Manager International
- record details of the request and management determinations on PROMIS as a critical decision.

Manager International must determine the level of any involvement of the AFP appointee in the interview in consultation with the Senior Liaison Officer at Post, and DFAT, through Head of Mission at Post; and with regard to any Whole of Government guidance.

8. Disclosure of information to foreign authorities

The [AFP National Guideline on the disclosure of information](#) sets the framework for all disclosures of information from the AFP. The [AFP National Guideline on international police-to-police assistance in death penalty situations](#) sets out additional considerations in situations where the death penalty may apply.

This guideline sets out:

- the additional considerations where the disclosure of information relates to an Australian who is detained, or is likely to be detained, by a foreign authority and there is a substantial, real and not remote risk the person has been, or is likely to be, subject to TCIDTP
- the formal approval process that applies to the release of that information, including the sending of questions or information to support the conduct of a custodial interview, as well as circumstances where an AFP officer is physically present at an interview.

8.1 Information disclosure considerations

Where the disclosure of information relates to an Australian who is detained, or is likely to be detained, by a foreign authority, AFP appointees must consider the following matters:

- the general prohibitions on TCIDTP
- the purpose for which the information is being sought by the foreign authority
- the human rights record of the foreign authority involved (if known)
- the consequences of lawfully disclosing information, including:
 - the likelihood that the person could be detained by a foreign authority (if the person

- is not already in detention), and
 - the likelihood that the person could be subjected to TCIDTP while in detention
 - the likelihood of the information being used, directly or indirectly, to support the person being subjected to TCIDTP
- the operational considerations
 - the consequences of withholding the information, including the potential impact on AFP relationships with foreign partner agencies.

Where the AFP appointee considers that there is a substantial, real and not remote risk that the Australian has been, or is likely to be, subject to TCIDTP, formal approval for the release of the information must be obtained from Manager International.

8.2 Approval process

Appointees must report details of the request for information to Manager International and document, where known, information relevant to the considerations listed above.

Manager International must:

- determine whether such assistance should be provided, and any limitations or restrictions that may apply
- record the decision and reasons in PROMIS as a critical decision.

8.3 Caveats

Following approval to disclose information to a foreign authority, subject to any limitations or restrictions that may apply under s. 8.2, the AFP appointee must include a caveat on all information disclosed. The caveat must include instructions on the use of information and its releasability; as follows:

‘The information contained in this document originates from the Australian Federal Police (AFP) and may be subject to disclosure restrictions under Australian law. This information may only be used for the purposes for which it was requested and provided. This information must not be disclosed to another agency or third party without the prior written consent of the AFP’.

9. Further advice

Queries about the content of this guideline should be referred to National Manager Serious and Organised Crime.

10. References

Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Crimes Act 1914](#) (Cth)
- [Criminal Code Act 1995](#) (Cth).

AFP governance instruments

- [AFP National Guideline on the disclosure of information](#)
- [AFP National Guideline on international police-to-police assistance in death penalty situations.](#)