



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

## 1. Disclosure and compliance

This document is marked **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 information management](#).

### 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

<b>AFP</b>	Australian Federal Police
<b>PROMIS</b>	Police Real-time Online Management Information System
<b>TCIDTP</b>	Torture or cruel, inhuman or degrading treatment or punishment

## 3. Definitions

**AFP appointee** – means a Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person:

- engaged overseas under s. 69A of the [Australian Federal Police Act 1979](#) (Cth) (the Act) to perform duties as an AFP employee
- seconded to the AFP under s. 69D of the Act
- engaged under s. 35 of the Act as a consultant or contractor to perform services for the AFP and determined under s. 35(2) of the Act to be an AFP appointee.

(See s. 4 of the Act.)

**Australian** – means a person who is an Australian citizen.

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**Cruel, inhuman or degrading treatment or punishment** – see [Attachment 1](#).

**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 (see the [Criminal Code Act 1995](#) (Cth)) and involves conduct that inflicts severe physical or mental pain or suffering on a person.

## 4. Guideline authority

This guideline was issued by National Manager International Operations using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

## 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 obligations for AFP appointees and 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
- where an appointee is involved in interviews of a detained person offshore in situations where there are substantial grounds for believing the person would be in danger of being subjected to TCIDTP
- in respect of disclosure of information about a person to foreign authorities where there are substantial grounds for believing the person would be in danger of being subjected to TCIDTP.

Substantial grounds for believing a person would be in danger of being subjected to TCIDTP are established in circumstances where there is a foreseeable, real and personal risk to the particular individual.

This guideline exists within broader national and international legal and policy frameworks which impose general prohibitions on TCIDTP, including in relation to accessorial forms of individual and state responsibility (e.g. aiding and abetting). This guideline is only intended to provide specific operational guidance to AFP appointees.

## 6. Reporting TCIDTP of Australians detained offshore

AFP 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 Engagement as soon as practicable. The senior liaison officer at post, or the mission commander in countries with AFP missions, are the AFP point of contact in country. The AFP appointee should include where known:

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

The AFP senior liaison officer must, as soon as practicable, report the likelihood of an Australian detained offshore being subject to TCIDTP to the Department of Foreign Affairs and Trade Head of Mission in country.

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

## 7. Involvement in interviews

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

AFP 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 Engagement
- record details of the request and management determinations on PROMIS as a critical decision.

AFP appointees considering attendance at, and/or involvement in, an interview conducted by another agency of a person detained offshore where there are substantial grounds for believing the person would be in danger of being subjected to TCIDTP must:

- report considerations for such attendance or involvement in the interview to Manager International Engagement, e.g.:
  - whether it is possible to mitigate the risk of TCIDTP occurring through requesting and evaluating assurances on detainee treatment
  - attaching conditions to any information to be passed governing the use to which it may be put
  - whether AFP appointee involvement in the interview would increase or decrease the likelihood of TCIDTP occurring
- record details of the request and management determinations on PROMIS as a critical decision
- suspend any involvement in the interview until a decision is made by Manager International Engagement.

Should Manager International Engagement permit AFP appointee attendance and/or involvement in the interview, the AFP appointee should monitor the situation closely and consider withdrawing from the interview should the risk of TCIDTP arise.

Manager International Engagement must determine the level of any involvement of the AFP appointee in the interview in consultation with the senior liaison officer at post, or mission

commander in countries with AFP missions, and the Department of Foreign Affairs and Trade, through the head of mission at post; and with regard to any applicable whole-of-government guidance.

## 8. Disclosure of information to foreign authorities

The [AFP National Guideline on information management](#) sets out the framework for all disclosures of information by 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 a person who is detained, or is likely to be detained, by a foreign authority and there are substantial grounds for believing the person would be in danger of being subjected to TCIDTP
- 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 appointee is physically present at an interview.

### 8.1 Information disclosure considerations

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

- purpose for which the information is being sought by the foreign authority
- laws, practices and human rights record of the foreign authority involved (if known)
- evidence of past significant harm or past activity which may give rise to such harm
- pattern of conduct shown by the receiving country in similar cases
- 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)
- operational requirements
- consequences of withholding the information, including the potential impact on AFP relationships with foreign partner agencies.

Where the AFP appointee considers that there are substantial grounds for believing the person would be in danger of being subjected to TCIDTP, formal approval for the release of the information must be obtained from Manager International Engagement.

### 8.2 Approval process

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

Manager International Engagement 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. (IPS)

## 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, and the provisions of the [AFP Practical Guide on applying protective markings](#), 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 International Operations.

## 10. References

### Legislation

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

### AFP governance instruments

- [AFP National Guideline on information management](#)
- [AFP National Guideline on international police-to-police assistance in death penalty situations](#)
- [AFP Practical Guide on applying protective markings](#).

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