



## Right to Protection from Torture (s.10(1))

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Section 10(1) of the *Human Rights Act 2004* says that:

1. No-one may be—
  - (a) Tortured; or
  - (b) Treated or punished in a cruel, inhuman or degrading way.

Note: The prohibition on torture and cruel, inhuman or degrading treatment under international law applies at all times and under all circumstances.

*This factsheet is not intended to be a substitute for legal advice.*

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### Scope of the Right

Torture generally refers to the deliberate infliction of very severe pain or suffering. This can include acts that cause both physical pain and mental suffering. It is also often interpreted to require the act or authorisation of a public official for purposes such as interrogation, threat, punishment or some other purpose.

Cruel, inhuman or degrading treatment or punishment, is a broader concept than torture. This generally refers to treatment that is less severe or does not meet the technical requirements of the torture definition, but that still involve abuse or humiliation. Examples of cruel, inhuman or degrading treatment include acts carried out by police using excessive force or unduly prolonged detention that causes mental harm. The assessment of whether something falls within this category will depend on the circumstances, including the duration and nature of the treatment and its impact on the victim.

The scope of degrading treatment can include forcing people to perform acts which humiliate them or gravely offend their sensibilities – especially in public – as form of punishment.

All government authorities and agents (including contractors) have a duty to refrain from inflicting torture or other cruel, inhuman or degrading treatment on individuals. Governments also have a duty to prohibit such acts in the law and to prevent them through effective legislative, administrative, judicial and other measures.

### Application of the Right in the ACT

Conduct covered by this right will often be a criminal offence. Torture is a crime anywhere in Australia under the *Commonwealth Criminal Code Act 1995* (Division 274). Most other acts of cruel, inhuman or degrading treatment would be covered by laws such as those dealing with assault or causing serious injury (see eg *Crimes Act 1900* (ACT), sections 19-36).

Public authorities can play a role in promoting, respecting and protecting this right through their laws, policies and programs, and services. They can also support people in our community who have been victims of torture overseas. Cruel, inhuman or degrading treatment comes up more frequently in our domestic context and can be relevant in the situations noted below.

Note: The *Human Rights Act* does not apply to the Commonwealth Government. So for example, it does not apply to federal officials running immigration detention centres.

Australia's obligations under international human rights law, the *Australian Human Rights Commission Act 1986*, and relevant criminal laws and procedures apply to the Commonwealth Government.

### Examples:

The following two examples illustrate the scope of the right to protection from cruel and degrading treatment.

- In *Davies v State of Victoria* [2012] VSC 343 (15 August 2012), the Supreme Court of Victoria found that the treatment of a resident with disabilities, who was dragged naked along a hallway in a Community Residential Unit, was cruel and degrading and contrary to section 10(b) of Victoria's *Charter of Human Rights and Responsibilities* – the equivalent to the *Human Rights Act 2004* (ACT).
- In *R v Porritt* [2008] ACTSC 71 (7 August 2008), the Supreme Court of the ACT held that when punishing any person bearing criminal responsibility, the Court is required to take into account the interest of the community in the rehabilitation and humane treatment of offenders. In *Portitt* this meant that the defendant should be released on a good behaviour bond.

### Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 10 could be engaged by activities that:

- Affect the physical or mental well-being of a person in a manner that may: cause serious physical or mental pain or suffering, or humiliate or debase a person;
- Create new powers, modifying or increasing existing powers of police, inspectors or authorised officers or other persons;
- Remove or restrict the right to complain about service delivery, or mistreatment by a public authority;
- Affect the operation of detention facilities and conditions attached to all forms of State care and detention (including access to goods and services, such as medical treatment, while in detention);
- Authorise changes to rules of evidence or procedure that would allow for evidence obtained as a result of torture, inhuman or degrading treatment, to be used in courts or tribunals;
- Authorise a person to be searched or puts in place procedures for conducting searches;
- Regulate the treatment of persons located at any site for which a public authority is responsible, including: a public hospital, an approved mental health service, a prison, a government school, a disability or aged care service, and supported residential service;
- Allow for prolonged periods of segregation or other particularly harsh prison regimes;
- Involve crisis intervention strategies or behavioural management plans that include the use of seclusion, chemical restraint or physical restraint;
- Define and regulate procedures for obtaining consent to medical treatment and experiments;
- Regulate medical treatment of persons without their consent;
- Regulate the conduct of medical or scientific research.



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