

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

CRIMES (HOSTAGES) BILL 1988

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SCHEDULE

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES



1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 1 December 1988

(Attorney-General)

A BILL

FOR

**An Act to give effect to the International Convention
Against the Taking of Hostages, and for related purposes**

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

Short title

1. This Act may be cited as the *Crimes (Hostages) Act 1988*.

5 **Commencement**

2. This Act commences on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears:

“Australia” includes:

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

“Australian aircraft” means:

- (a) an aircraft registered in accordance with the Civil Aviation 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 the member's duties as such a member);

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“Australian coastal sea” means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia;

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“Australian ship” means:

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

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“Convention” means the International Convention Against the Taking of Hostages that was opened for signature at New York on 18 December 1979, a copy of the English text of which is set out in the Schedule;

“offence against this Act” means:

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- (a) an offence against subsection 8 (1); or
- (b) an offence against:
 - (i) section 7 of the *Crimes Act 1914*; or
 - (ii) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;
 being an offence that relates to an offence referred to in paragraph (a) of this definition;

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“part of Australia” means a State or Territory.

(2) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the same meaning as it has in the Convention.

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(3) For the purposes of sections 6 and 7A of the *Crimes Act 1914*, an offence against subsection 8 (1) of this Act shall be taken not to be an offence against a law of the Commonwealth.

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Act extends to external Territories

4. This Act extends to all external Territories.

Application

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

Meaning of hostage-taking

7. For the purposes of this Act, a person commits an act of hostage-taking if the person:

- (a) seizes or detains another person (in this section called “the hostage”); and
- (b) threatens to kill, to injure, or to continue to detain, the hostage;

in order to compel:

- (c) a legislative, executive or judicial institution in Australia or in a foreign country;
- (d) an international intergovernmental organisation; or
- (e) any other person (whether an individual or a body corporate) or group of persons;

to do, or abstain from doing, any act as an explicit or implicit condition for the release of the hostage.

When hostage-taking an offence

8. (1) A person who, at any time after the Convention enters into force for Australia, commits an act of hostage-taking is guilty of an offence against this subsection.

(2) The punishment for an offence against subsection (1) is imprisonment for life or for lesser term.

(3) Subject to section 9, a person shall not be charged with an offence against this Act unless:

- (a) the act alleged to constitute the offence was committed:
 - (i) in Australia; or
 - (ii) on an Australian ship or an Australian aircraft, whether in or outside Australia; or
- (b) where the act alleged to constitute the offence was committed outside Australia (otherwise than on an Australian ship or an Australian aircraft):

- (i) the person was, at the time the act was committed, an Australian citizen;
- (ii) the person is present in Australia; or
- (iii) the act was committed in order to compel a legislative, executive or judicial institution in Australia to do, or abstain from doing, any act.

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Person not to be charged in certain circumstances

9. (1) A person shall not be charged in relation to an act alleged to constitute an offence against this Act if, under article 12 of the Convention, the Convention would not apply in relation to that act.

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(2) Subject to subsection (3), a person shall not be charged with an offence against this Act if:

- (a) the act alleged to constitute the offence was committed in a particular State;
- (b) the person was, at the time the act was committed, a citizen of that State;
- (c) the person is in that State; and
- (d) the person seized or detained as a hostage was, at the time of that seizure or detention, a citizen of that State.

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(3) Subsection (2) does not apply where the person referred to in paragraph (2) (c) is in the State where the act alleged to constitute the offence was committed by reason of being extradited to that State in relation to that act.

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(4) In this section, "State" means:

- (a) Australia; or
- (b) a foreign country.

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Prosecutions

10. (1) 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.

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(2) Notwithstanding that a consent in accordance with subsection (1) has not been given in relation to an offence against this Act:

- (a) a person may be charged with an offence against this Act;
- (b) a person may be arrested for such an offence, 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;

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but no further step in proceedings referred to in subsection (1) shall be taken until such a consent has been given.

(3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

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Venue where offence committed on aircraft

5 **11.** Where, in the trial on indictment in a court of a State or Territory of an offence against this Act committed on an aircraft in flight, an act constituting in whole or in part the offence charged is proved, it shall be presumed, unless the evidence shows the contrary, that that act did not take place in another part of Australia, being a State.

Change of venue

10 **12. (1)** Where, at any time after the presentation in a court of a State or Territory of an indictment for an offence against this Act committed on an aircraft in flight and before the jury has returned its verdict:

- (a) the defendant objects to the trial on the ground that the offence, if committed, was committed in another part of Australia, being a State; and
- 15 (b) the court is satisfied that the offence, if committed, was committed in that other part of Australia;

20 the court shall forthwith order that the proceedings on the indictment be discontinued and, if the jury has been empanelled, that the jury be discharged, and that the defendant appear before that court or another court of the first-mentioned State or Territory at a specified time, not later than 28 days after the day on which the order is made, to be dealt with in accordance with this section.

(2) Where a court makes an order under subsection (1), the court may also:

- 25 (a) order that the defendant be kept in such custody as is specified in the order; or
- (b) admit the defendant to bail, on such recognizances as the court thinks fit.

30 (3) If, before the time at which the defendant is to appear before a court pursuant to an order under subsection (1), the Attorney-General or the Director of Public Prosecutions notifies that court that he or she does not intend to file an indictment against the defendant in a court of another part of Australia, the first-mentioned court shall, as soon as practicable after being so notified, make an order:

- 35 (a) discharging the defendant from the obligation to appear before that court at that time; and
- (b) directing:
 - (i) if the defendant is held in custody—that he or she be released; or
 - 40 (ii) if he or she has been admitted to bail—that the recognizances upon which he or she was admitted to bail be discharged.

(4) If, at or before the time at which the defendant is to appear before a court pursuant to an order under subsection (1), the Attorney-General or the Director of Public Prosecutions notifies that court that he or she has

filed an indictment against the defendant in a court of another part of Australia, the first-mentioned court shall:

- (a) if the defendant is in custody—forthwith; or
- (b) in any other case—as soon as practicable after the time at which the defendant is to appear before that court;

make an order directing that the defendant be taken, as soon as practicable, in the custody of such person as it directs, to the part of Australia in which the indictment was filed and there be delivered to the custody of a person having authority to arrest the defendant, and may make such further orders as it thinks necessary for facilitating the carrying into effect of the first-mentioned order.

(5) If:

- (a) at the time at which the defendant is to appear before a court pursuant to an order under subsection (1), neither the Attorney-General nor the Director of Public Prosecutions has notified that court that he or she does not intend to file an indictment against the defendant in a court in another part of Australia;
- (b) neither the Attorney-General nor the Director of Public Prosecutions notifies the first-mentioned court before or at that time that he or she has filed such an indictment; and
- (c) the defendant is in custody;

the first-mentioned court shall, at that time, make an order directing that the defendant be released.

(6) Where an order has been made under subsection (1) in relation to an indictment, the proceedings on that indictment do not, and that order does not, prevent or prejudice any other indictment, or any information, against the defendant, whether on the same charge or on any other charge.

(7) The jurisdiction of a court under subsection (3), (4) or (5) may be exercised by the court constituted by a single judge or Magistrate.

Evidence of certain matters

13. A certificate by the Attorney-General stating that:

- (a) the Convention entered into force for Australia on a specified date; and
- (b) as at the date of the certificate, the Convention remains in force for Australia;

is, for the purposes of any proceedings under this Act, *prima facie* evidence of the facts stated in the certificate.

Section 38 of Judiciary Act

14. 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*, be deemed not to be a matter arising directly under a treaty.

Assistance under article 6 of Convention

5 **15.** A person, other than an Australian citizen, who is in custody in respect of an offence that is alleged to have been committed against this Act is entitled to the assistance referred to in paragraph 3 of article 6 of the Convention.

SCHEDULE

Section 3

INTERNATIONAL CONVENTION AGAINST THE TAKING
OF HOSTAGES

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 security and the promotion of friendly relations and co-operation among States,

Recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited,

Being convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

- (a) attempts to commit an act of hostage-taking, or
- (b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking,

likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

SCHEDULE—continued

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;
- (b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

- (a) in its territory or on board a ship or aircraft registered in that State;
- (b) by any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;
- (c) in order to compel that State to do or abstain from doing any act;
or
- (d) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him 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 6

1. Upon being satisfied that the circumstances so warrant, any State Party

SCHEDULE—continued

in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) the State where the offence was committed;
- (b) the State against which compulsion has been directed or attempted;
- (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
- (d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
- (e) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;
- (f) the international intergovernmental organization against which compulsion has been directed or attempted;
- (g) all other States concerned.

3. 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 establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization

SCHEDULE—continued

referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

- (a) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or
- (b) that the person's position may be prejudiced:
 - (i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or
 - (ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties.

SCHEDULE—continued

States Parties undertake to include such offences as extraditable offences in every 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, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, 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 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Protocols Additional to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a

SCHEDULE—continued

single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application 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 16

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 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 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

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

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

Article 18

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.

SCHEDULE—continued

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 19

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

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

Article 20

The original of this Convention, of which the Arabic, 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 18 December 1979.