



## **Fact Sheet 1 – What is mutual assistance?**

### **Why do we need mutual assistance?**

Australia needs to ensure that criminals cannot evade prosecution and confiscation action just because the evidence or proceeds of their crime are in different countries. This requires a responsive, streamlined mutual assistance system that effectively combats domestic and transnational crime, including terrorism, with appropriate safeguards.

### **Statistics about cases – Annual Report**

Information about the number of mutual assistance requests made and received by Australia is available from our annual report, which you can download from our website at [www.ag.gov.au](http://www.ag.gov.au).

### **This Fact Sheet is information – not legal advice**

This is for general information only. It does not give legal advice on the operation of the *Mutual Assistance in Criminal Matters Act 1987* (Mutual Assistance Act) and should not be relied on as legal advice.

### **What is mutual assistance?**

Mutual assistance is the process countries use to provide and obtain formal government to government assistance in criminal investigations and prosecutions. Mutual assistance is also used to recover the proceeds of crime. Examples of common forms of mutual assistance are where:

- a person is accused of fraud and money laundering offences and the person's bank account records are sought from financial institutions in a foreign country to assist with the investigation and possible prosecution of the person and/or to recover the money/proceeds of crime, or
- a key witness to a crime resides in a foreign country and a witness statement is sought from that person to assist with the criminal investigation and possible prosecution of an accused person.

The Mutual Assistance Act governs the provision of mutual assistance in criminal matters in Australia. The Act is administered by the Australian Government Attorney-General's Department.

Mutual assistance is separate from police-to-police, agency to agency and other types of informal assistance. Information on the difference between mutual assistance and police-to-police assistance is contained in Fact Sheet 2.

## **When is a mutual assistance request made ?**

Generally, a mutual assistance request will be required where a country seeks the following types of assistance:

- assistance involving the use coercive powers, such as a search warrant
- evidence for use in a trial (rather than for merely investigative purposes), and
- assistance for which the country concerned requires a formal mutual assistance request. For example, most countries will not allow a prisoner to travel to another country to give evidence without a mutual assistance request.

## **Who can make a mutual assistance request?**

Mutual assistance requests from Australia to other countries can only be made by the Attorney-General, the Minister for Justice and Customs, or a delegate. Mutual assistance requests are made by the Australian Government at the request of an Australian law enforcement agency, a court or in some circumstances a defendant in a criminal matter. Members of the Australian public are not able to make a mutual assistance request.

## **What type of assistance can Australia request or provide?**

Australia can offer a broad range of assistance to, and request a broad range of assistance from, other countries. Examples of mutual assistance provided by Australia include:

- executing search warrants to obtain evidence, for example bank records from financial institutions
- taking evidence from a witness located in Australia for foreign court proceedings
- arranging for witnesses to travel with their consent to a foreign country to give evidence in foreign criminal proceedings, and
- registering and enforcing orders restraining and forfeiting the proceeds of crime.

While the assistance available from other countries varies, many countries can provide similar forms of assistance to those provided by Australia.

## **Limitations on mutual assistance that can be provided by Australia**

Before providing the mutual assistance requested, the Attorney-General or the Minister for Justice and Customs must consider the grounds for refusing requests that are set out in section 8 of the Mutual Assistance Act and any grounds provided for in treaties to which Australia is a party.

For example, under the Mutual Assistance Act, a request for mutual assistance will be refused if, in the opinion of the Attorney-General or the Minister for Justice and Customs:

- the request relates to the prosecution or punishment of a person for a political offence
- the request was made to prosecute, punish or otherwise prejudice a person on account of his or her race, sex, religion, nationality or political opinions

- the request relates to an act or omission that constitutes an offence under Australia's military law but not under Australia's ordinary criminal law
- the granting of the request would prejudice the sovereignty, security or national interest of Australia or the essential interests of an Australian State or Territory, or
- the request relates to the prosecution of a person for an offence for which the person has been acquitted or pardoned by a competent foreign tribunal or authority, or has already undergone the relevant punishment ('double jeopardy').

A request for mutual assistance may be refused if, in the opinion of the Attorney-General or the Minister for Justice and Customs:

- the request relates to the prosecution or punishment of a person for an act or omission that does not constitute an offence against Australian law ('dual criminality')
- the request relates to the prosecution or punishment of a person for an act or omission that occurred outside the foreign country making the request and a similar act or omission occurring outside Australia in similar circumstances would not have constituted an offence against Australia law ('extraterritoriality')
- the request relates to the prosecution or punishment of a person for an act or omission for which the person could no longer be prosecuted in Australia because of lapse of time or any other reasons
- the assistance could prejudice an Australian criminal investigation or proceeding
- the assistance would prejudice the safety of any person in or outside Australia
- the assistance would impose an excessive burden on the resources of the Commonwealth or of a State or Territory, or
- given all the circumstances of the case, the assistance requested should not be granted.

In deciding whether to accept or refuse a mutual assistance request the Attorney-General or Minister for Justice and Customs must also consider whether the offence carries the death penalty. For more information on how mutual assistance works in death penalty matters, please see Fact Sheet 3.

### **Which countries can Australia make a mutual assistance request to or receive a mutual assistance request from?**

Under Australian law, Australia can request mutual assistance from any country and receive a request from any country. The process is assisted by over 20 bilateral mutual assistance treaties and some multilateral international conventions to which Australia is a party.

This is different from extradition. A country must be declared in Regulations to be an extradition country for Australia to be able to receive an extradition request from that country. See further Fact Sheet 4.

### **How do foreign countries make requests for assistance to Australia?**

Requests under the Mutual Assistance Act may be made to the Attorney-General of the Government of Australia or his delegate. If requests are received by other Australian agencies or a court in

This fact sheet is available electronically at [www.ag.gov.au/extraditionandma](http://www.ag.gov.au/extraditionandma)

Australia, they should be sent to the Australian Central Authority for Mutual Assistance in Criminal Matters in the Attorney-General's Department.

The Mutual Assistance Act sets out the required form of mutual assistance requests. Requests should:

- be in writing
- include a description of the nature of the criminal matter
- include a summary of the relevant facts, and
- include a summary of the applicable law (including the penalty for the offence(s) under investigation).

### **What is required for Australia to make a request for mutual assistance?**

Law enforcement agencies that require information about what is needed for Australia to make a mutual assistance request to a foreign country should contact the Australian Central Authority for Mutual Assistance in Criminal Matters in the Attorney-General's Department. Federal law enforcement authorities should contact the International Branch of the Commonwealth Director of Public Prosecutions in Canberra.

### **Confidentiality**

Under the Mutual Assistance Act, it is an offence for a Commonwealth official to disclose the fact that Australia has received a request for mutual assistance, the contents of a request or that a request for assistance was granted or refused, unless they are authorised to disclose such information by the Attorney-General or the Minister for Justice and Customs.

The Australian Government does not generally disclose information about requests that Australia makes to other countries, as they are usually made in the course of an ongoing law enforcement operation. Disclosure of information about a mutual assistance request could jeopardise the investigation, apprehension or prosecution of an alleged offender.