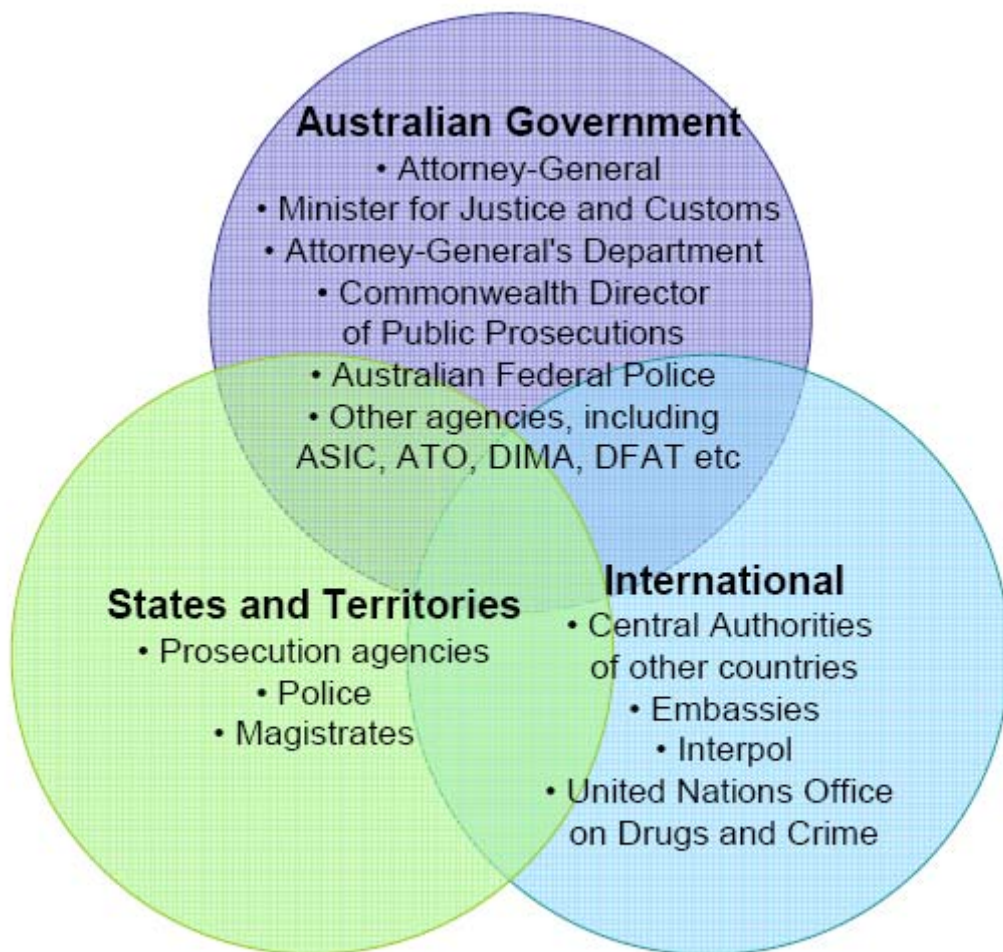


Part 7: How will the right people do their jobs best?

There are many people, from both domestic and international agencies, involved in the mutual assistance process. The figure below shows the range of agencies which participate in the mutual assistance process.

Figure 4



Part 4 of this paper identified the specific roles of each agency in the mutual assistance process. This part of the paper considers how people can best carry out those roles. Given the dramatic increase in the use of mutual assistance and its essential role in combating crime, it is imperative that we improve domestic and international capacity in the mutual assistance process.

7.1 Improving domestic capacity

7.1.1 Enhancing skills and knowledge

The Australian Government Attorney-General's Department is currently undertaking two major projects to enhance the skills and knowledge of participants in the mutual assistance process.

The Case Management Project is streamlining current practices in mutual assistance and extradition casework areas and examining how key information can be more readily accessed and applied.

It is important that Australia's law enforcement and prosecution agencies be aware of the availability of mutual assistance and understand how mutual assistance works. The Technical Expertise Project is providing training on mutual assistance to a variety of stakeholders, including Australian Government agencies and State and Territory law enforcement and prosecution authorities by enhancing the skills and knowledge of key participants in the mutual assistance process which will further encourage Australian agencies to use mutual assistance as a routine law enforcement tool.

The Australian Government Attorney-General's Department has also implemented a public awareness strategy on international crime cooperation, including mutual assistance. As part of this strategy, the Australian Government Attorney-General's Department has set up a webpage which includes links to fact sheets, flowcharts and Frequently Asked Questions on mutual assistance. This provides Australian agencies with access to information on how mutual assistance works.¹

G. Enhancing skills and knowledge: The Australian Government will continue to implement strategies to ensure that participants in the mutual assistance process have the necessary skills and knowledge to make and action requests.

7.1.2 Working cooperatively with all Australian agencies

All Commonwealth, State and Territory law enforcement and prosecution agencies can seek mutual assistance from foreign countries through the Australian Government Attorney-General's Department and can be involved in executing requests from foreign countries. For the mutual assistance process to operate as efficiently as possible, it is important that Commonwealth, State and Territory agencies build strong, enduring relationships.

One way of doing this is to establish expert groups and liaison networks so that Commonwealth, State and Territory agencies can recognise and share their expertise. A regular forum could be held to exchange information and expertise on mutual assistance and international crime cooperation more generally.

¹ More information is available at www.ag.gov.au/extraditionandma

For complex matters, or matters which involve more than one agency, the Australian Government Attorney-General's Department could hold a strategic meeting at the commencement of the matter with all relevant stakeholders to discuss the assistance sought, to clarify the roles and responsibilities of each agency and to establish key timeframes. This initial meeting could be followed up with regular liaison meetings where appropriate.

H. Working Cooperatively: The Australian Government will explore the most effective ways to work cooperatively on mutual assistance with the States and Territories.

7.1.3 Clarifying roles and responsibilities

As demonstrated by figure 4 and flowcharts 1, 2 and 3, the roles and responsibilities of agencies in the mutual assistance process can overlap and there can be multiple handling in dealing with mutual assistance requests.

This Review provides an opportunity to clarify the role of Commonwealth, State and Territory agencies in the mutual assistance process.

The Commonwealth has Administrative Arrangements with all States and the Northern Territory on practices and procedures in dealing with mutual assistance requests.

The Administrative Arrangements are substantially similar in content. Each Arrangement provides for the establishment of a National Consultative Committee, whose basic function is to oversee the general operation of the Arrangements and to report yearly to SCAG. The Arrangements also establish State mutual assistance liaison officers. In addition, the Arrangements set out the distribution of costs for processing mutual assistance requests and allow for the rotation of officers between the relevant State or Territory authorities and Commonwealth authorities to increase the understanding of agencies' roles in the mutual assistance process.

These arrangements do not reflect current practice. They were completed over 10 years ago and little appears to have been done to implement them. The National Consultative Committee has not formally met since 1991. The Committee report had previously been listed on the SCAG agenda as an item for consideration but was removed from the agenda in 2002.

The Mutual Assistance Review provides a timely opportunity to create new agreements with each State and Territory. The Australian Government could negotiate an MOU with each State and Territory which clearly describes the roles and responsibilities of the parties and clarifies the distribution of costs between the parties. Either SCAG or the Australasian Police Ministers' Council could be useful forums to progress and report on these MOUs.

I. Clarifying roles and responsibilities: The Australian Government will review existing arrangements with States and Territories to clarify the roles and responsibilities of agencies in the mutual assistance process.

7.1.4 Should Australia adopt a Central Taskforce model?

Currently, Australia's Central Authority for mutual assistance comprises case officers in the Australian Government Attorney-General's Department.

However, as Part 4 of this paper identified, the mutual assistance process involves a number of other agencies, including the AFP, the CDPP and State and Territory law enforcement and prosecution agencies. Some mutual assistance cases also involve other agencies such as ASIC or the ATO.

The US's Central Authority for mutual assistance comprises officers from their Justice Department. A Federal Bureau Investigations Officer and a United States Marshall are co-located with the Central Authority to assist with the execution of requests.

An integrated taskforce approach to dealing with mutual assistance, that includes officers from law enforcement and prosecution agencies co-located in the Central Authority, could be a very effective model for Australia. The taskforce could comprise officers from the:

- Australian Government Attorney-General's Department
- AFP
- State or Territory prosecuting agencies
- CDPP, and
- other agencies where appropriate for a large or complex case.

26. **Central Taskforce:** The Australian Government Attorney-General's Department is Australia's Central Authority for mutual assistance and is staffed by mutual assistance case officers. Should Australia adopt a Taskforce model for mutual assistance by co-locating mutual assistance case officers with prosecutors and law enforcement officers? Which agencies should be included in the taskforce? Should the taskforce be located in the Australian Government Attorney-General's Department?

7.2 Improving international capacity

7.2.1 Building international relationships

Mutual assistance has emerged as an essential law enforcement tool to combat crime and confiscate the proceeds of crime. It is important that Australia continues to build strong relationships with its key mutual assistance partners.

Australia currently has 24 bilateral treaties on mutual assistance and is also a party to a number of multilateral treaties, including the *United Nations Convention against Corruption* and the *United Nations Convention against Transnational Organised Crime* which include mutual assistance provisions. Australia will continue to focus on bilateral and multilateral treaty negotiations in mutual assistance. While Australia can make and receive mutual assistance requests without a treaty, a treaty provides certainty for Australia on how Australian mutual assistance requests will be dealt with by the other country.

Australia will also continue to actively engage with the United Nations Office on Drugs and Crime (UNODC). The UNODC is the key United Nations body responsible for strengthening regional and international cooperation in preventing and combating transnational crime. For example, the UNODC has published a model mutual assistance act and treaty and an Expert Working Groups' Report on Mutual Legal Assistance Casework Best Practice in 2001.

What is the United Nations Office on Drugs and Crime?

The United Nations Office on Drugs and Crime is mandated to assist United Nations Member countries in their struggle against illicit drugs, crime and terrorism. The three pillars of the UNODC work programme are:

- research and analytical work to increase knowledge and understanding of drugs and crime issues
- normative work to assist States in the ratification and implementation of international treaties, the development of domestic legislation on drugs, crime and terrorism, and the provision of secretariat and substantive services to the treaty-based and governing bodies, and
- field-based technical cooperation projects to enhance the capacity of Member States to counteract illicit drugs, crime and terrorism.

For further information on the UNODC please visit <http://www.unodc.org>

J. Building international relationships: The Australian Government will continue to focus on developing international mutual assistance relationships through bilateral and multilateral treaties and active engagement with the United Nations Office on Drugs and Crime.

Australia could consider posting international crime cooperation liaison officers overseas. Law enforcement officers and case officers could be posted to either the Embassies or the Central Authorities of Australia's major international crime cooperation partners, such as the United States of America and the United Kingdom. Officers could be posted permanently or on a temporary basis.

Liaison officers could be expected to play an important role in facilitating the timely progress of Australia's international crime cooperation matters and ensure Australia provides an appropriate level of assistance to requesting parties. In light of the significant growth in mutual assistance requests, progressing mutual assistance matters would form a key part of the liaison officer's role. However, liaison officers would also play an important role in facilitating the timely progress of Australia's other international crime cooperation matters, such as requests for extradition and international transfer of prisoners. Liaison officers would also have a role in engaging with international bodies such as the UNODC.

This initiative is encouraged in the UNODC's Informal Expert Working Groups' Report on Mutual Legal Assistance Casework Best Practice in 2001. The report suggests that 'experience shows that these "on-site" initiatives produce faster and more useful mutual legal assistance than is usually possible through "distance" dealings'.²

27. **Overseas liaison officers:** Should the Australian Government post international crime cooperation liaison officers in our Embassies accredited to our key international crime cooperation partners or the Central Authorities of our key international crime cooperation partners?

7.2.2 Building regional relationships and capacity

The Australian Government's White Paper on Australia's Overseas Aid Program (White Paper) identified the following three key themes that are relevant to mutual assistance:

- Australia's aid focus will continue to be the Asia-Pacific region
- Australia needs to strengthen cooperation on transboundary threats with a focus on areas such as transnational crime, drug and human trafficking and counter-terrorism, and
- the Australian Government will develop a whole-of-government anti-corruption strategy. This strategy will include a law and justice pillar with five key operational themes: prevention, criminalisation, international cooperation, recovery of assets and technical assistance.

Our neighbours in the Asia-Pacific region are key partners in mutual assistance. Australia's work in improving regional capacity in mutual assistance is, and will continue to be, a part of this broader whole-of-government framework in regional development.

What is the Australian Government's White Paper on Australia's Overseas Aid Program?

The Australian Government's White Paper on Australia's Overseas Aid Program provides the strategic framework for the direction and delivery of Australia's aid program over the next ten years. The Paper was launched by the Australian Minister for Foreign Affairs, the Hon Alexander Downer MP, on 26 April 2006.

For further information on the White Paper please visit <http://www.ausaid.gov.au>

² UNODC's Informal Expert Working Groups' Report on Mutual Legal Assistance Casework Best Practice in 2001, page 10. http://www.unodc.org/pdf/lap_mlaeg_report_final.pdf

The Australian Government is working with countries in the Asia-Pacific region to increase their capacity in mutual assistance. In particular, the Australian Government has developed two programs to provide targeted assistance to countries in the Pacific and South East Asia regions: the Pacific Legal Knowledge Program and the Regional Legal Assistance Unit in the Australian Government's Attorney-General's Department.

The Pacific Legal Knowledge Program has been developed to assist officers of Pacific island countries to share knowledge and skills in a range of legal areas, including international crime cooperation. For example, in December 2005, the Australian Government Attorney-General's Department held an initial workshop under the Program for law and justice sector officials in Vanuatu. A follow-up workshop will be held in Cairns in the second half of 2006.

The Regional Legal Assistance Unit provides assistance to South East Asian countries to strengthen their legal frameworks and capacity for international crime cooperation. Upon receiving a request for technical assistance, the Unit works cooperatively with the country to tailor a package of assistance to the country's needs. The Unit provides a range of technical assistance, including drafting legislation and designing workshops to increase the skills and knowledge of relevant officials. The Unit has also drafted model legislation on mutual assistance which can be adapted to the needs of any country.

Officers of the Australian Government Attorney-General's Department also regularly attend and present at workshops aimed at strengthening mutual assistance capacity. Recent activities undertaken by the Australian Government Attorney-General's Department have included:

- coordinating a three day workshop at the Jakarta Centre for Law Enforcement Cooperation for over 60 legal and law enforcement officers from 22 countries on the practical aspects of international cooperation in counter-terrorism cases
- working with representatives of the CDPP to provide training at the Asian Development Bank (ADB)/Organisation for Economic Cooperation and Development (OECD) Anti-Corruption Initiative for Asia
- presenting a scenario-based practical training session for the Association of Southeast Asian Nations (ASEAN) Government Legal Officers Training on Mutual Legal Assistance in Criminal Matters
- working with representatives of the AFP and CDPP to present a practical workshop to Chinese officials in Beijing, China on Australia's proceeds of crime mechanisms, and
- playing an active role in the Asia Pacific Economic Cooperation (APEC) Anticorruption and Transparency Taskforce Experts Workshop, in Shanghai, on prosecuting corruption through the denial of safe haven, asset recovery and extradition.

K. Building regional relationships and capacity: The Australian Government will continue to explore opportunities to build capacity in the Asia-Pacific region in mutual assistance.

7.2.3 Sharing information

It is important that all countries share up-to-date information on their mutual assistance arrangements. Countries will be more likely to make mutual assistance requests where there is clear guidance on requirements for those requests.

The UNODC's Informal Expert Working Groups' Report on Mutual Legal Assistance Casework Best Practice in 2001 stated:

The provision of information to foreign authorities was also highlighted as an important measure to facilitate effective cooperation. States should develop guidelines on domestic law and procedures relating to mutual legal assistance to inform foreign authorities on the requirements that must be met to obtain assistance. Any such guidelines should be made available to foreign authorities through a variety of methods, such as, for example, publication on a website...³

The Australian Government Attorney-General's Department is implementing a public awareness strategy on Australia's mutual assistance arrangements. As part of this strategy, the Department has set up a webpage which includes links to factsheets, flowcharts and Frequently Asked Questions on Australia's procedures for mutual assistance.

The link to the website is

<http://www.ag.gov.au/extraditionandma>

The Australian Government Attorney-General's Department could also set up a secure website for access by Australia's mutual assistance partners. This could include checklists and precedents to assist those foreign countries in making mutual assistance requests to Australia.

The Commonwealth Secretariat has also undertaken to set up the Commonwealth Network of Contact Persons (CNCP). The CNCP aims to facilitate communication in mutual assistance matters between member countries through a central database. The database will include the contact numbers of officers that can assist with mutual assistance questions for that member country.

The sharing of information through the webpage on mutual assistance and the CNCP enables other countries to gain an understanding of Australia's mutual assistance system and provides a direct contact for any queries.

L. Sharing information: The Australian Government will continue to explore the most effective ways of sharing information with other countries on our mutual assistance arrangements.

³ UNODC's Informal Expert Working Groups' Report on Mutual Legal Assistance Casework Best Practice in 2001, page 8. http://www.unodc.org/pdf/lap_mlaeg_report_final.pdf