

AFP Practical Guide on international police-to-police assistance in potential death penalty situations.

1. Security classification of instrument

This document is classified: **UNCLASSIFIED**. This document is intended for internal AFP use. Wider dissemination should be approved by the document owner and/or authorised by Commonwealth law.

2. Acronyms

AFP Australian Federal Police
AOCC AFP Operations Coordination Centre

3. Definitions

Mutual assistance request – has the meaning as stated in the [Mutual Assistance in Criminal Matters Act 1987](#) (Cth).

4. Authority to create the Practical Guide

This guideline was issued by the National Manager Border and International 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 and in consultation with the Attorney-General's Department.

5. Introduction

This Practical Guide is intended to provide members with information relating to the basis for conducting enquiries:

- from foreign law enforcement agencies to the AFP
- to foreign law enforcement agencies from the AFP

where offences may attract the death penalty.

6. Authority to provide information to foreign law enforcement agencies

The AFP is authorised to provide information to foreign law enforcement agencies in accordance with the [Australian Federal Police Act 1979](#) (Cth) and [Ministerial Direction](#). Additionally, a number of United Nations Conventions, to which Australia is a signatory, further support the processes of conducting international police cooperation.

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This guide applies only to the provision of information which can be provided on a police-to-police basis. This guide does not apply to the provision of assistance that requires a mutual assistance request. In such cases, ss. 8(1A) and 8(1B) of the [Mutual Assistance in Criminal Matters Act 1987](#) (Cth) apply. That Act is administered by the Attorney-General's Department.

7. Policy for cooperation with foreign law enforcement agencies

The policy for AFP cooperation with foreign law enforcement agencies on a police-to-police basis is stated in this section.

Where no person has been arrested or detained on suspicion of having committed an offence in respect of which the death penalty may be imposed in a foreign country:

- Police-to-police assistance can be provided without reference to the Attorney-General or Minister for Home Affairs.
- Requests for assistance with potential death implications will be subject to an approval process.
- Requests for assistance to and from the AFP International Network must be forwarded to the relevant AFP International Desk via an overseas liaison communication, highlighting the issue.
- Requests for assistance through Interpol via the AFP Operations Coordination Centre will also be subject to the approval process.

8. Approval process

On receipt of a request the relevant International Desk/AFP Operations Coordination Centre (AOCC) will determine whether a matter has potential death penalty implications and implement the AFP approval process for the exchange of information.

Where necessary the AFP member or requesting agency will be asked to complete and submit the 'Assistance in Potential Death Penalty Situations – Approval to Release Information' form and forward it to the relevant International Desk/AOCC.

The International Desk/AOCC will seek a decision from a member of the International Executive who will take into consideration the factors detailed below as to whether the matter will proceed. This process will be required for all new matters and for significant developments in existing matters.

In deciding whether or not to approve the exchange of information in death penalty matters, Manager International Network or the National Manager Border and International must consider:

- the purpose of providing the information

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- the likelihood of the authorities in the foreign country using the information only for that purpose
- the reliability of the information
- whether the information is exculpatory in nature
- nationalities of the person involved
- the person's age and personal circumstances.
- the seriousness of the suspected criminal activity
- the potential risks to the person, and other persons, in **not** providing the information
- the degree of risk to the person in providing the information, including the likelihood the death penalty will be imposed, and
- Australia's interest in promoting and securing cooperation from overseas agencies in combating crime.

Information provided by the AFP to foreign law enforcement agencies must be in accordance with the [Australian Federal Police Act 1979](#) (Cth) and any other legislation, treaty, convention, [Ministerial Direction](#), agreement, memorandum of understanding, policy, guideline and practical guide or associated document relevant to the provision of information to foreign law enforcement agencies.

Procedures after arrest, detention, charge or conviction

After arrest, or detention, or charge, or conviction of an offence for which the death penalty may be imposed in a foreign country:

- only the Attorney-General or the Minister for Home Affairs may approve the exchange of information on a police-to-police basis
- all requests for the exchange of information are to be notified to the Manager International Network as soon as possible after receipt
- no action is to be taken, nor should any indication be given as to the decision likely to be taken in respect of the request
- following consultation with the Attorney-General's Department, the National Manager Border and International will provide the Commissioner and the Deputy Commissioner (Operations) with such advice as considered necessary to seek advice from the Attorney-General or the Minister for Home Affairs
- the AFP will seek advice from the Attorney-General or the Minister for Home Affairs on a case-by-case basis to ensure ongoing AFP actions correlate with Australian Government policy and other international obligations.

9. Reporting

The Commissioner of the AFP is required to report to the Minister for Home Affairs biannually on the nature and number of cases where information is provided to foreign law enforcement agencies in death penalty cases.

10. Further advice

Any queries relevant to the content of this Practical Guide may be referred to the Manager International Network.

11. References

- [Australian Federal Police Act 1979](#) (Cth)
- [Mutual Assistance in Criminal Matters Act 1987](#) (Cth)
- [Ministerial Direction](#).