



VICTORIA POLICE

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**Extradition and Mutual Assistance Review Team  
International Crime Cooperation Branch  
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National Circuit  
BARTON ACT 2600**

**17 October 2006**

**Subject: Federal Government Review of Mutual Assistance Law and Practice**

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Thank you for your invitation to comment on your review paper on mutual assistance legislation and procedures.

Victoria Police supports the review of the *The Mutual Assistance in Criminal Matters Act 1987*. We note the emergence of new technologies, the increase in trans-national crime and growth of international travel contribute to the complexity of seeking evidence to support criminal prosecutions.

The following comments are Victoria Police's response to the particular issues raised in the review paper.

Comment

*Issue 1*                      *Objects of Mutual Assistance Act*

Victoria Police supports the objects of the Mutual Assistance Act.

*Issue 2*                      *Minister's Approval of Assistance.*

Victoria Police supports the view that the Minister should approve a request in general terms to enable Australia law enforcement agencies to action the request by exercising the powers available in ordinary domestic legislation.

*Issue 3                      Grounds of refusal-general.*

Victoria Police believes that the grounds where the Minister *must refuse* a request for mutual assistance should be expanded to include where the request to prosecute is made on account of a person's sexuality.

*Issue 4                      Grounds of refusal-proceeds of crime*

It is noted that grounds for refusal provide an important safeguard and further consideration would be required before withdrawing these grounds for proceeds of crime assistance.

*Issue 5                      Double Jeopardy*

Issues relating to the principles of double jeopardy are presently being considered in a number of jurisdictions. Australia should be able to consider requests where a person has been subject to acquittal, pardoned or punished for an offence in special circumstances.

*Issue 6                      Extraterritoriality*

Victoria Police believes that the Minister should retain the right to refuse a request on the grounds of extraterritoriality.

*Issue 7                      Lapse of Time*

The refusal under this section is discretionary and whilst largely obsolete may apply a safeguard in selective circumstances.

*Issue 8                      Take Evidence Proceedings*

Consideration should be given to the expansion of take evidence proceedings to include the investigation stage.

*Issue 9                      Magistrate's Discretion*

Victoria Police considers the use of video link as an appropriate forum in *take evidence* and *production order* proceedings and support consideration of the removal of discretion in this area.

*Issue 10                     Transfer of Persons to Give Evidence*

The current position should be retained.

*Issue 11                     Transfer of Prisoners to Give Evidence*

The current position should be retained.

*Issue 12 DNA from Persons Without Consent*

Victoria Police supports in principle the extension to obtain DNA without consent at the request of a foreign country. Further information on safeguards and operability would need to be provided before a definitive view can be formed. The taking of any sample would need to conform to requirements under Victorian legislation.

*Issue 13 Providing Information from the DNA Database*

Victoria Police supports the suggestion that the provision of DNA information under mutual assistance should be expanded to include the investigation stage, not only where criminal proceedings have commenced in a foreign country. Presently NCIDD is a conduit for data that is supplied by member jurisdictions. NCIDD does not own the data rather ownership remains with the jurisdictions.

*Issue 14 DNA Matching*

Victoria Police supports the principle that controlled access be made to the NCIDD under mutual assistance arrangements.

*Issue 15 Telecommunications Interception Material Already in the Possession of an Enforcement Agency*

Victoria Police supports the principle that access to telecommunications interception material should be treated similarly to surveillance device material.

*Issue 16 Interception of Telecommunications and use of Surveillance Devices without a Domestic Investigation*

The function of telephone intercepts and surveillance device monitoring is resource intensive and costly. Victoria Police presently priorities its own internal requests to meet high demand. It is acknowledge that in the pursuit of fighting trans-national crime such powers may be an advantage. It is noted that it is important to be able to verify the information that is supplied by a foreign country in order to make an application for a warrant. This is an important factor in maintaining the integrity of telephone interception and surveillance device applications. In order to maintain consistency from perspectives of resources, verification of information and diplomacy, benefit may be obtained by channelling all such requests through the Minister to one law enforcement agency. However, it is acknowledged that some investigations may not have a *federal aspect* and hence may require a warrant to be obtained by state and territory jurisdictions under their respective legislation. It is also noted that if Victoria Police was requested to undertake a telephone interception or surveillance device request on behalf of a foreign country then the Chief Commissioner would need to be formally consulted prior to any decision by the Minister. Without such consultation it is possible that such a request could have a negative impact on domestic operations.

*Issue 17 Registration of Civil Proceeds of Crime Orders*

Victoria Police believes that careful consideration should be given prior to making civil based proceeds of crime orders available to all countries.

*Issue 18                    Interaction between the Mutual Assistance Act and the Proceeds of Crime Act*

Interaction appears appropriate and effective.

*Issue 19                    Service of Documents*

Victoria Police requires further information on the number of previous requests received relating to Victoria before it can form a view on this issue.

*Issue 20                    Content of Mutual Assistance Requests*

Victoria Police note that the provision of detailed information from a foreign country in MA requests is desirable. Similarly the ongoing provision of information through the life of the MA request is important and will significantly value add to the benefit obtained.

*Issue 21                    Transfer of Persons to Give Evidence in Australia*

This provision appears adequate.

*Issue 22                    Use of Foreign Evidence*

Victoria Police supports the principle that Australia should ensure that judges and legal practitioners have the necessary familiarity with the Foreign Evidence Act to ensure that foreign evidence obtained under mutual assistance is not necessarily excluded from use in an Australian court.

*Issue 23                    Request on Behalf of a Defendant*

The current position should be retained.

*Issue 24                    Confidentiality of Outgoing Mutual Assistance Requests*

Victoria Police supports then proposition for a confidentiality requirement on Commonwealth officers to keep confidential any mutual assistance request from Australia to a foreign country.

*Issue 25                    Privacy*

Victoria Police supports the principle to expressly identify and authorise personal information flows in the mutual assistance process. Such amendment would clarify that this Act prevails over what is stated in the Victorian *Information Privacy Act 2000*.

*Issue 26                    Central Taskforce*

Victoria Police considers that it is premature to apply a Central Taskforce model for mutual assistance cases. It is noted that with the exception of jurisdictions such as AFP, ASIC, ACC and NSWPOL, other states and territories have very few MA requests. It is also noted that

presently Victoria Police has a liaison officer in Canberra (Inspector Dennis Godfrey) on a *pilot* basis, who could provide some support to AGD in VicPol cases of MA.

If you have further points you wish to discuss, the contact officer for this matter is Inspector Neil Paterson (☎ 03 9247 6723), Manager - Legal Policy, Legal and Corporate Policy, Corporate Strategy and Performance Department.

Yours sincerely

Jenny Peachey  
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Victoria Police