



Australian Government
Attorney-General's Department

International Crime Cooperation Division

FACT SHEET

Fact Sheet 3—How does mutual assistance work in death penalty matters?

This fact sheet is information, not legal advice

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

Mutual assistance in death penalty matters

The Mutual Assistance Act regulates the provision of mutual assistance in death penalty cases. Mutual assistance requests can be made at various stages of the law enforcement process, starting from investigation, through prosecution to sentencing and appeal. The rules that apply to the provision of mutual assistance in death penalty cases vary depending on whether the matter is only at the investigation stage or whether charges have been laid.

Section 8(1A) of the Mutual Assistance Act provides that a request by a foreign country for mutual assistance must be refused if it relates to the prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed in the foreign country, unless the Attorney-General or the Minister for Justice (the Minister) is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.

‘Special circumstances’ is not defined in the Mutual Assistance Act. However an example of a ‘special circumstance’ is when the foreign country provides an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out. Another example of a ‘special circumstance’ is that the assistance provided would assist a defendant to prove their innocence.

Section 8(1B) of the Mutual Assistance Act covers cases where the person has not yet been charged or convicted. It gives the Attorney-General or the a discretion to refuse a request if the Attorney-General or the Minister:

- believes that the provision of the assistance may result in the death penalty being imposed on a person; and
- after taking into consideration the interests of international criminal co-operation, is of the opinion that in the circumstances of the case the request should not be granted.

Police-to-police assistance and the death penalty

The AFP 'Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations' governs the provision of police to police assistance by the AFP in potential death penalty matters.