

## Part 1: Introduction

The emergence of new technologies and the growth of international travel have made it increasingly common for evidence and proceeds of a crime committed in one country to be located in another. These same factors have contributed to the growth of transnational crimes—such as drug trafficking, money laundering and trafficking in women and children—and increased the global threat from terrorism.

Australia needs to ensure that criminals cannot evade prosecution just because evidence is in a foreign country. Australia also needs to be able to take action to deny criminals of the proceeds of their crimes, regardless of where those proceeds may be found.

Mutual assistance is the formal Government to Government process countries use to assist one another in the investigation and prosecution of criminal offences. Mutual assistance can also be used to locate, restrain, forfeit and share the proceeds of crime.

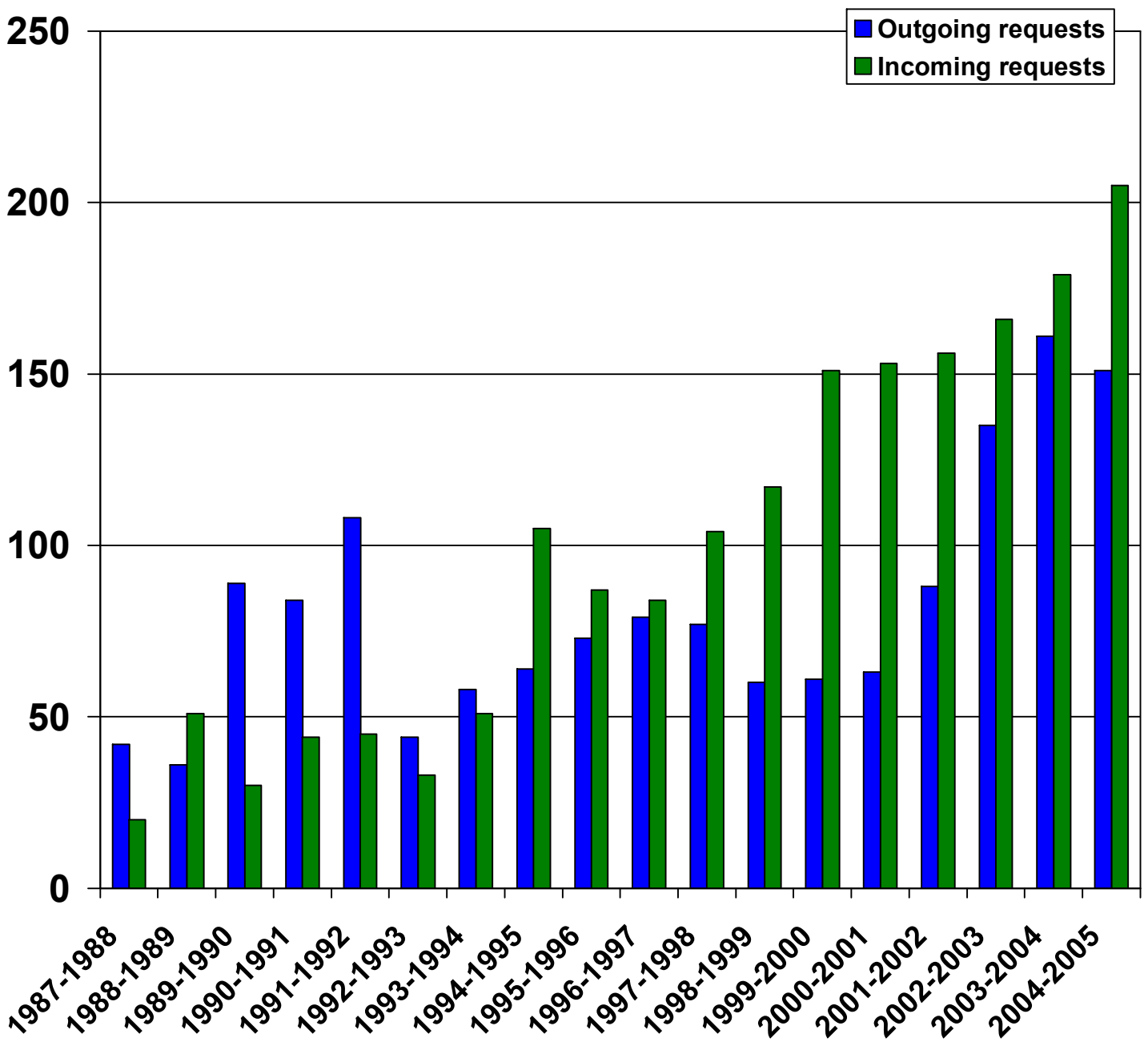
Most countries require a mutual assistance request for assistance that would involve the use of coercive powers, such as executing a search warrant or taking evidence from a person before a court. For some countries, such as Australia, it is necessary to make a mutual assistance request to obtain evidence from a foreign country where that evidence is to be used in court proceedings. There are also specific types of assistance that do not involve the use of coercive powers for which many countries require a mutual assistance request. For example, in most countries a prisoner can only voluntarily travel to another country to give evidence in response to a mutual assistance request.

In Australia, mutual assistance is primarily regulated by the Mutual Assistance Act. Under the Mutual Assistance Act, Australia can request assistance from any country and receive a request for assistance from any country.

To facilitate the mutual assistance process, Australia has entered into bilateral mutual assistance treaties with 24 countries including the United States, Hong Kong, the Netherlands and Indonesia. Australia is also a party to a number of multilateral conventions, such as the *United Nations Convention on Transnational Organised Crime*, which contain mutual assistance obligations.

It is almost twenty years since the introduction of the Mutual Assistance Act. In that time there has been an exponential growth in the use of mutual assistance both in Australia and overseas. In the past six years alone, Australia has more than doubled the number of requests it makes to foreign countries while in the same period the number of requests received by Australia has increased by over 30% (see **figure 1**). This growth is likely to continue for the foreseeable future.

Figure 1: Comparison of incoming and outgoing mutual assistance requests



Given the dramatic increase in the use of mutual assistance, and the fact that Australia's current arrangements have been in place for almost two decades, it is timely to consider how Australia's mutual assistance system can be improved.

The objective of this Review is to develop a responsive, streamlined mutual assistance system that effectively supports the investigation and prosecution of criminal offences, helps to ensure that criminals are denied the proceeds of their crimes, and which incorporates appropriate safeguards.

To achieve this objective, the Review is seeking to answer three broad questions: "What should mutual assistance do?", "How should we do it?" and "How will the right people do their jobs best?" The answers to these questions will be guided by a number of principles which are set out at **figure 2**. These include efficiency, responsiveness, accountability and the 'normalisation' of mutual assistance.

**Figure 2: Guiding principles for this Review**

### **The guiding principles for this Review**

This Review is guided by the following principles:

- *Efficiency*: Resources, including time, labour and money, should be used efficiently to ensure that mutual assistance requests can be executed without unnecessary delay
- *Role clarity*: The nature and scope of the roles of the key agencies involved in the mutual assistance process should be clear to maximise the effectiveness of cooperation in mutual assistance matters
- *Responsiveness*: The mutual assistance process should facilitate fast responses to requests and enable the provision of a wide range of assistance
- *Compatible evidence*: The mutual assistance process should ensure that, to the degree possible, evidence obtained overseas can be used in Australian courts in accordance with Australian evidence principles
- *Effective law enforcement*: The mutual assistance process should effectively support the prosecution of criminals and the confiscation of their proceeds of crime
- *'Normalising' mutual assistance*: Mutual assistance should be used routinely as a standard law enforcement tool.
- *Accountability*: The mutual assistance process should have appropriate public accountability mechanisms
- *Appropriate safeguards*: Appropriate safeguards should be built into the mutual assistance process
- *Confidentiality*: The mutual assistance process should protect the confidentiality of ongoing law enforcement investigations
- *Sovereignty*: The mutual assistance process should operate to support Australia's national interests, and
- *Technological neutrality*: The mutual assistance process should be flexible enough to respond to advances in technology.

The Government is conducting this Review to ensure that Australia has the best possible mutual assistance system to cooperate with other countries to fight domestic and transnational crime. Public consultation is an important part of achieving this goal. Accordingly, we invite your comments on the issues presented in this Paper.

## 1.1 The scope of this Review

This Review is a wide-ranging policy Review that considers all the features of Australia's mutual assistance system, including mutual assistance legislation and practical arrangements.

The terms of reference for this Review are at Appendix 1. This Review examines the Mutual Assistance Act.

This Review is a review of mutual assistance in criminal matters only and does not consider the *Mutual Assistance in Business Regulation Act 1992*.

The Review examines the relevant parts of the *Foreign Evidence Act 1994* (Foreign Evidence Act) that set out how evidence obtained from foreign countries, through mutual assistance, can be used in Australian courts.

This Review also considers proceeds of crime issues. The Mutual Assistance Act provisions on proceeds of crime are linked to provisions in the *Proceeds of Crime Act 2002*<sup>1</sup> (Proceeds of Crime Act). This Review examines the best way to use the Mutual Assistance Act and/or the Proceeds of Crime Act to provide proceeds of crime assistance to foreign countries. There is currently a separate review being conducted of the Proceeds of Crime Act. This is an independent statutory review.<sup>2</sup>

This Review does not consider the mutual assistance provisions in the *International Criminal Court Act 2002* or the *International War Crimes Tribunals Act 1995*. These Acts deal with Australia's assistance to the International Criminal Court, the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia and have been specifically developed for those bodies.

Mutual assistance is confined to assistance requested on a Government to Government basis. It is separate from 'police-to-police', 'agency-to-agency' and other types of information assistance in criminal matters.

This Review is not a review of police-to-police or agency-to-agency assistance.

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<sup>1</sup> The *Proceeds of Crime Act 1987* is also used in mutual assistance for actions which originated prior to the enactment of the *Proceeds of Crime Act 2002*.

<sup>2</sup> Further information on this review is available at [www.crimeprevention.gov.au](http://www.crimeprevention.gov.au)