

Part 5: What is agency-to-agency assistance?

Mutual assistance and agency-to-agency assistance are separate forms of international crime cooperation that complement one another.

‘Agency-to-agency assistance’ is a generic term that encompasses both police-to-police assistance and cooperation between agencies like the ATO and ASIC with their counterparts in other countries.

Mutual assistance requires formal Government to Government requests and is governed by particular procedures. In contrast, Australian law enforcement and regulatory agencies can share information informally, and often more quickly, with their foreign counterparts.

Most Australian federal investigative agencies have liaison and information sharing arrangements with their counterparts in foreign countries. For example, the Australian Customs Service can exchange information with foreign Customs agencies to facilitate the enforcement of customs laws and the prevention, investigation and combating of customs offences.

The information shared through agency-to-agency channels generally does not entail the exercise of coercive powers and does not require a mutual assistance request to be made.

Sometimes the terms ‘police-to-police assistance’ and ‘agency-to-agency assistance’ are used interchangeably. ‘Police-to-police assistance’ refers to assistance that the AFP or State and Territory police services give their counterparts in foreign police services. In this paper, the term ‘agency-to-agency assistance’ is used throughout and includes ‘police-to-police assistance’.

5.1 Expediting cooperation through the use of agency-to-agency assistance

The United Nations Office on Drugs and Crime (UNODC) Expert Working Groups’ Report on Mutual Legal Assistance Casework Best Practice in 2001 identified the value of agency-to-agency assistance where:

- coercive measures are not required (ie the evidence can be provided voluntarily), or
- evidence can be obtained from public records or publicly available sources.¹

The report recognised that, whenever possible, assistance should be sought through agency-to-agency channels because it is ‘faster, cheaper and more flexible than the more formal route of mutual legal assistance.’²

Agency-to-agency assistance can also be used to complement a formal mutual assistance request. Police, regulatory or investigative agencies can make advance preparations or provide non-coercive assistance at the same time as the mutual assistance request is being

¹ UNODC’s Expert Working Groups’ Report on Mutual Legal Assistance Casework Best Practice in 2001, page 9. http://www.unodc.org/pdf/lap_mlaeg_report_final.pdf

² UNODC’s Expert Working Groups’ Report on Mutual Legal Assistance Casework Best Practice in 2001, page 9. http://www.unodc.org/pdf/lap_mlaeg_report_final.pdf

processed by the central authority. In these cases, the mutual assistance request should acknowledge the complementary agency-to-agency assistance.

The implementation of joint investigative teams on transnational crime is a good example of the value of agency-to-agency assistance.

It is important that the Australian Government Attorney-General's Department, police, prosecutors and regulatory agencies have a broad understanding of the various mechanisms for information exchange with foreign countries. This will ensure that Australian agencies use the most efficient and effective ways to obtain and provide international assistance.

5.2 Examples of Australian Government agency-to-agency assistance

This section provides a brief description of the international information sharing arrangements of some key Australian Government law enforcement and regulatory agencies.

Australian Federal Police (AFP)

International cooperation is a key function of the AFP under the *Australian Federal Police Act 1979*. The AFP exchanges intelligence and information with its international counterparts as part of its international cooperation in combating transnational crime. Each year, the AFP transmits around 13,000 pieces of information to overseas law enforcement agencies and receives around 11,000 pieces of information in return.³

The AFP can also provide other forms of assistance to its international counterparts on a police-to-police basis, including the provision of physical surveillance and obtaining and providing voluntary witness statements.

The AFP has 17 memoranda of understanding (MOUs) with overseas counterpart agencies, which include provisions on information sharing arrangements. In addition, the AFP shares information through an extensive overseas liaison officer network. The AFP currently has 86 liaison officers at 31 posts in 26 countries. By 2007, the AFP will have 88 officers at 33 posts in 28 countries.

The AFP's dissemination of information to foreign law enforcement agencies outside of the formal mutual assistance regime is governed by the *Privacy Act 1988*

What does the AFP do?

The AFP's role is to enforce Commonwealth criminal law and to protect Commonwealth and national interests from crime in Australia and overseas. It works closely with a range of other law enforcement bodies at State, Territory, Commonwealth and international levels, enhancing safety and providing a secure regional and global environment. The new challenges the AFP faces include counter terrorism, human trafficking and sexual servitude, cyber-crime, peace operations, protection and other transnational crimes.

What is a Memorandum of Understanding?

A written document signed by two or more parties setting out mutually agreed arrangements which is not necessarily legally binding.

For further information on the AFP please visit <http://www.afp.gov.au>

³ Comments made by the AFP Commissioner to the Senate Legal and Constitutional Committee on 17 February 2006.

(Privacy Act), the *Australian Federal Police Act 1979* and other legislative provisions that govern the release of specific information.

Australian Crime Commission (ACC)

The ACC is authorised under the *Australian Crime Commission Act 2002* (ACC Act) to cooperate with its overseas counterparts. This cooperation can include sharing information and conducting joint operations.

The ACC is authorised to disseminate information in its possession to a foreign law enforcement agency if that information is relevant to the foreign agencies' activities. The Chief Executive Officer (CEO) of the ACC, or a delegate of the CEO, can approve the sharing of that information. Information can only be provided where its sharing would not be contrary to any relevant Commonwealth, State or Territory law. Information can include information obtained using the ACC's compulsory powers. These compulsory powers include examining witnesses and issuing notices to produce documents.

In addition, the ACC can seek information on a police-to-police basis through the AFP and the AFP liaison officer network.

Australian Customs Service (Customs)

Customs exchanges information with its international counterparts to facilitate the enforcement of customs laws and the prevention, investigation and combating of customs offences. The *Customs Administration Act 1985* allows Customs to disclose information in its possession to an overseas agency or an international organisation. Customs can only disclose such information where:

- the disclosure is in accordance with an agreement entered into with the agency or organisation
- the agency or organisation has made an undertaking in relation to use and further disclosure of the information as required by the Act, and
- the CEO has authorised that disclosure.

Customs currently has over 15 bilateral MOUs with overseas counterpart agencies and is in the process of negotiating more.

Like the AFP, Customs also has an extensive overseas liaison officer network. Customs officers are posted in Washington, Brussels, Bangkok, Tokyo, Beijing and Jakarta.

What does the ACC do?

The ACC is a Commonwealth statutory body working to counter serious and organised crime. It has both intelligence and investigative capabilities and performs a number of important functions, including criminal intelligence collection and analysis and conducting intelligence-led investigations into federally relevant criminal activity.

For further information on the ACC please visit

<http://www.crimecommission.gov.au>

What does Customs do?

Customs manages the security and integrity of Australia's borders. It works closely with other government and international agencies to detect and deter unlawful movements of goods and people across the border.

For further information on Customs please visit

<http://www.customs.gov.au>

The types of information shared between Customs and its overseas counterparts include the movement of goods, customs law enforcement techniques and customs intelligence reports.

Australian Securities and Investments Commission (ASIC)

ASIC can exchange information with the government, or an agency, of a foreign country pursuant to the provisions of s127 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). ASIC has 35 bilateral MOUs with overseas regulators and is a party to one multilateral MOU.

ASIC's overseas counterparts can exercise coercive powers to obtain information requested by ASIC which can be used in administrative, civil and criminal investigations and administrative and civil proceedings.

In providing assistance to a foreign regulator in relation to criminal investigations or proceedings, ASIC must rely on either assistance based on non-coercive powers or the mutual assistance process under the Mutual Assistance Act.

Note: Under the *Mutual Assistance in Business Regulation Act 1992*, ASIC is able to obtain information on behalf of a foreign country, including through coercive powers, for use in administrative, civil and, in certain circumstances, criminal investigations and proceedings. The Mutual Assistance in Business Regulation Act is not considered in this paper or as part of the Mutual Assistance Review.

Australian Tax Office (ATO)

The ATO can exchange information with its overseas counterparts under tax treaties. Tax treaties aim to prevent double taxation and fiscal evasion and foster cooperation between Australia and other international tax authorities by enforcing their respective tax laws. Australia has tax treaties with more than 40 countries. Under the treaties, the ATO can release information in its possession at the time of the request, as well as initiate action to gather information at the request of the foreign authority.

What does ASIC do?

ASIC enforces and regulates company and financial services laws to protect consumers, investors and creditors. It regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

For further information on ASIC please visit

<http://www.asic.gov.au>

What does the ATO do?

The ATO is the Government's principal revenue collection agency. Its role is to manage and shape tax, excise and superannuation systems that fund services for Australians. The ATO also addresses broader issues affecting Australia's revenue systems, such as aggressive tax planning, persistent tax debtors, globalisation and the cash economy.

For further information on the ATO please visit

<http://www.ato.gov.au>

Australian Transaction Reports and Analysis Centre (AUSTRAC)

AUSTRAC can share information with authorised international agencies under the *Financial Transactions Reports Act 1988* (FTR Act). An ‘authorised international agency’ must be a foreign country agency and not an international organisation such as Interpol. AUSTRAC must have an agreement with the agency in the form of letters of exchange or an MOU to exchange information.

AUSTRAC has established 46 Instruments with international counterparts for the exchange of financial intelligence, usually in the form of MOUs. The information AUSTRAC shares includes suspect transaction records, analysis and intelligence reports. AUSTRAC conducts significant preliminary research into the integrity, system of law, security and privacy arrangements of the relevant country and agency before entering into an MOU.

Other agencies (such as the AFP and the ATO) are also authorised to share AUSTRAC’s information internationally. The requirements for sharing that information are set out in domestic MOUs between AUSTRAC and those agencies.

What does AUSTRAC do?

AUSTRAC is Australia's anti-money laundering regulator and specialist financial intelligence unit. AUSTRAC collects, analyses and disseminates financial intelligence to domestic agencies and international counterparts.

For further information on AUSTRAC please visit

<http://www.austrac.gov.au>

Department of Immigration and Multicultural Affairs (DIMA)

DIMA exchanges information with its international counterparts as part of facilitating the entry, stay and departure arrangements of non-citizens, border control and the settlement of migrants and humanitarian entrants. The disclosure of DIMA client information is currently governed by the disclosure provisions:

- in the *Privacy Act 1988*—for example, DIMA visa application forms seek to make clients reasonably aware that their application may be provided to a range of agencies. This is in line with Information Privacy Principle (IPP) 11 in the Privacy Act, and
- in the *Migration Act 1958* in relation to Movement Records (s488), and Personal Identifiers such as a photograph or other image of the person's face and shoulders (s336A-L) (more than 120 foreign Governments are gazetted to obtain this information).

What does DIMA do?

DIMA’s key objectives are to:

- manage the lawful and orderly entry and stay of people in Australia, including through effective border security, and
- promote a society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably.

DIMA has a number of MOUs with overseas counterpart agencies which include provisions on information sharing arrangements. In addition, DIMA shares information through an extensive overseas officer network. DIMA has 140 Australian officers at 42 posts in 38 countries.

For further information on DIMA please visit

<http://www.immi.gov.au>