

Queensland Department of Justice and Attorney-General Submission on issues raised in the review of Australia's mutual assistance law and practice.

NB. This response does not address all issues raised in the discussion paper released by the Commonwealth but addresses those which have some relevance for Queensland from the perspective of this department.

Issue 26: Central taskforce – Should State and Territory officials be co-located in the Central Authority?

Response:

The detail of this issue is that a prosecutor and police officer from each state should be physically located together in a taskforce in Canberra. DJAG does not believe that there is any need at this point for a such a taskforce. The number of mutual assistance applications that are made each year by Queensland law enforcement agencies is very small and any issues that do arise with respect to these applications can adequately be dealt with by telephone and email communication. This limited number of applications would make it very difficult to justify the resources required to outpost staff to such a taskforce.

Streamlining the mutual assistance process

Issue 2: Minister's approval of assistance – Should State and Territory laws be enlivened for the purposes of executing mutual assistance requests? For example, a State or Territory police officer could obtain and execute a search warrant under the law of that State or Territory.

Response:

Provided that steps are taken to ensure that the evidence obtained under a request is being obtained in such a manner that it will be usable by the requesting country, DJAG has no objection to the suggestion that the Minister, instead of authorising a police officer to apply for a specific mutual assistance search warrant in accordance with the Mutual Assistance Act can instead use the relevant domestic law to apply for the appropriate search warrant.

Issue 3: Grounds of refusal – general – Are the current grounds for refusal appropriate? Currently there are three grounds specifically relating to States and Territories:

- Section 8(1)(e) – granting the request would prejudice the essential interests of a State or Territory
- Section 8(2)(d) – providing assistance could prejudice an investigation or proceeding in relation to a criminal matter in Australia
- Section 8(2)(f) – providing assistance would impose an excessive burden on the resources of a State or Territory

Response:

DJAG is satisfied that the current grounds for refusal are appropriate.

Issue 8: Take evidence proceedings – Are any reforms needed to improve the way State and Territory magistrates conduct take evidence proceedings?

Response:

There are no representations from Queensland Magistrates that indicate that there is any need for reform in this area.

Issue 9: Magistrate's discretion – Are any reforms needed to the State or Territory magistrate's discretion to permit video link in take evidence proceedings?

Response:

DJAG submits in favour of retaining the general discretion in the magistrate to determine whether to permit the use of video link. As conceded in the discussion paper there are "some cases" where "the interests of justice may be in issue". While this possibility exists it is considered the court should retain a discretion. While the proposition that Australia may want to assist the foreign country fully and facilitate the taking of evidence by video link is a policy issue this information can be provided to the court by way of submission in support of an application to use a video link. It is also something that the magistrate may weigh up in the exercise of his/her discretion. However it should not limit the magistrate's discretion.

There may be cases in which a magistrate concludes that the person to whom the proceedings relates would be prejudiced by being limited to a video link cross-examination, eg. Where voluminous documents are involved.

If as a matter of policy it is determined that for the reasons advanced, the unfettered discretion of the magistrate should be removed it is submitted that the discretion should remain subject to the application of specific criteria eg. That it is necessary in the interests of the administration of justice. Another approach may be to adopt the test in s 178C(2) to the effect that the proceedings must be conducted using video link facilities unless the court, in the interests of justice otherwise orders.

Queensland Magistrates have noted, following a recent application to New Zealand for evidence to be taken under mutual assistance, the need for amendment of the *Evidence and Procedure (New Zealand) Regulations 1995* to include the Magistrates Court of Queensland as one whose officers can assist New Zealand courts, and can therefore be involved in taking evidence by video link.

Issue 16: Interception of telecommunications and use of surveillance devices without a domestic investigation

Response:

It should be noted that at present Queensland does not have legislation that enables Queensland law enforcement authorities to obtain warrants for telecommunications interception.