



**Australian Government**  
**Department of Immigration and Multicultural Affairs**

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## **DIMA response to the AGD review of Australia's mutual assistance regime**

1. Thank you for providing us with the opportunity to comment on the review of the mutual assistance in criminal matters arrangements currently being conducted by the Attorney-General's Department.

2. At the outset we wish to make it clear that overall we do not perceive many major issues with the suggested model for change. We would like to provide you with the following comments for your consideration.

3. Principle C: Grounds of refusal in death penalty matters

The paper states that Australia will retain the grounds of refusal in death penalty matters. DIMA strongly supports the refusal of assistance in death penalty matters.

4. Issue 10: Transfer of persons to give evidence  
Issue 11: Transfer of prisoners to give evidence

DIMA would facilitate the re-entry of non-citizens to Australia. We do not envisage any problems if the person has a permanent visa with re-entry rights. However to facilitate re-entry would be more problematic with people who hold temporary visas and unlawful non-citizens. It is not clear how the undertaking in s 26(3)(c) of the *Mutual Assistance in Criminal Matters Act* would apply if the person does not have a visa allowing them to re-enter.

5. Issue 12: DNA from persons without consent

DIMA only uses DNA test results as part of visa and citizenship processes to establish claimed biological relationships in the absence of reliable documentation. DNA testing is not mandatory and undertaking the test is entirely the client's decision. It is not used for identity checking or criminal investigation purposes.

6. Issue 13: Providing information from the DNA database  
Issue 14: DNA matching

DIMA does not provide DNA information to the National Criminal Investigation DNA Database. DIMA does not collect, test, store, nor have access to the DNA of its clients. DIMA cannot comment on the proposals for this process.

7. Issue 21: Transfer of persons to give evidence in Australia

DIMA can facilitate the entry of non-citizens to Australia through the Criminal Justice Visa regime.

8. Issue 25: Privacy: Mutual Assistance can involve personal information flows between a range of agencies in Australia and between Australia and foreign countries for law enforcement purposes. Should the *Mutual Assistance in Criminal Matters Act* expressly identify and authorise the personal information flows in the mutual assistance process?

It is DIMA's view that it should. It would create more certainty from a privacy perspective if the authority to exchange information was clearly set out in the *Mutual Assistance in Criminal Matters Act*. This would mean that information flows in the mutual assistance process would clearly fall within the IPP 10.1(c) and the IPP 11.1 (d) exceptions, 'required or authorised by or under law'. These grounds for use and disclosure are much more reliable than the 'enforcement of the criminal law' exceptions in IPP 10.1(d) and IPP 11.1(e).

9. If the relevant use and disclosure provisions were to be very prescriptive in terms of specifying the type of information that can be exchanged and the agencies to whom the information can be provided, a broad consultation process would need to take place. All necessary and appropriate types of information exchanges would need to be accounted for and all relevant agencies included. A balance would need to be struck between the information exchanges to the extent appropriate and the need to facilitate information legitimate exchanges in accordance with mutual assistance processes. We would also recommend the inclusion of a clause that requires the review of provisions after a certain time.

10. Principle E: Application of the Freedom of Information Act to mutual assistance documents: the Freedom of Information Act and applicable exemptions will continue to apply to mutual assistance decisions

DIMA supports this proposition.

11. Principle F: Judicial review of mutual assistance decisions: Avenues for judicial review on mutual assistance decisions will continue to be available

DIMA supports this proposition.

12. The review should also ensure that only legitimate requests for international assistance should be processed through the mutual assistance channel. Requests which are, for example, politically tainted, speculative, would involve an unreasonable amount of resources, or would seek to transfer the costs and responsibilities for an investigation or prosecution to another country, should continue to be rejected.

13. The review should also consider whether State and Territory Directors of Public Prosecutions (DPPs) and the Office of the Commonwealth Director of Public Prosecutions should become involved at an earlier stage in the process. For example,

the DPPs should ensure that for outgoing requests, the evidence being sought by law enforcement is in fact what is needed for a successful prosecution.

14. DIMA would like to ensure that the Criminal Justice Visa arrangements stay in place.

### ***Criminal Justice Visa arrangements – shared responsibility***

15. DIMA has carriage of the Criminal Justice Visa (CJV) regime. This is a class of visa which is issued to persons extradited to Australia and to witnesses. A CJV is issued to witnesses in consultation with the Attorney-General. DIMA's view is that the CJV regime is effective in its current format.