

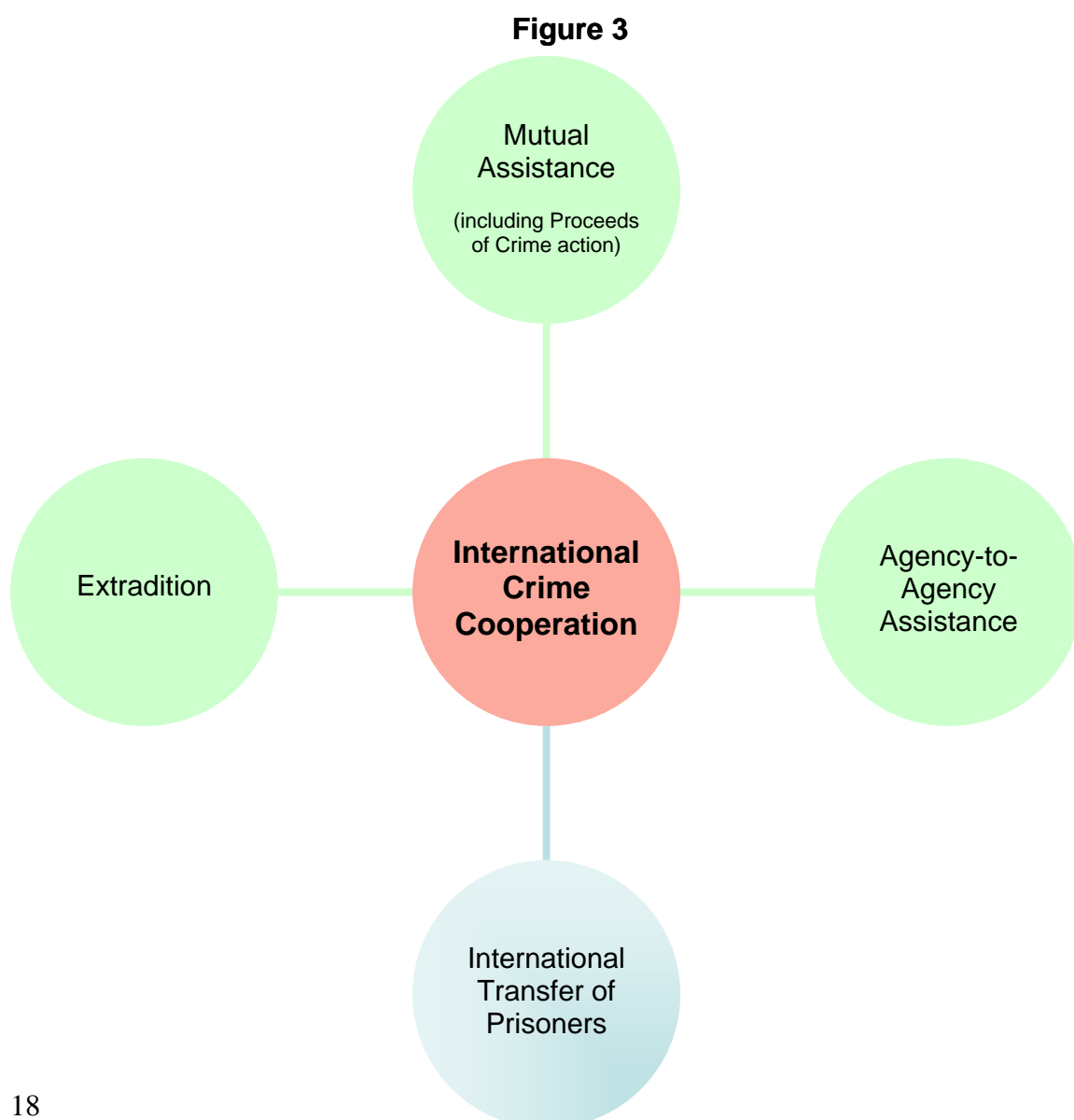
Part 3: Australia’s international crime cooperation tools

Australia uses a range of mechanisms to cooperate with other countries in criminal matters. There are three key tools that are used in investigation and prosecution and to deny criminals of the proceeds of crime: mutual assistance (including proceeds of crime action), extradition and agency-to-agency assistance.

These tools complement one another. Australian law enforcement agencies and the Australian Government Attorney-General’s Department work together to ensure that they are using the right combination of these tools to fight crime.

In addition to these tools, Australia also has an International Transfer of Prisoner scheme. This scheme allows Australians who are imprisoned in certain countries to apply to return to Australia to serve the remainder of their sentences in an Australian prison. The scheme also allows foreign prisoners who are imprisoned in Australia to apply to serve their sentences in certain foreign countries of which they are a national or with which they have community ties.

The international crime cooperation framework is illustrated at **figure 3**.



3.1 Mutual Assistance

As set out in Part 1 of this paper, mutual assistance is the particular process countries use for Government to Government assistance in criminal investigations and prosecutions.

There are links between mutual assistance and other international crime cooperation tools. For example, mutual assistance can be used to complement extradition where both the alleged offender and the evidence of a crime are in a foreign country.

For further information on mutual assistance please visit <http://www.ag.gov.au/extraditionandma>

3.2 Proceeds of Crime action

Proceeds of crime action is an important mutual assistance tool. Under the Mutual Assistance Act and the Proceeds of Crime Act, Australia can:

- register and enforce foreign proceeds of crime orders, including foreign forfeiture orders and foreign restraining orders
- locate, restrain and forfeit the proceeds of a crime, and
- share the proceeds of a crime with the foreign country.

Australia's mechanisms to locate, restrain, forfeit and share the proceeds of crime to foreign countries are discussed in more detail in Part 6 of this paper.

What are proceeds of crime?

Proceeds of crime is any property or profit which comes from criminal activity. For example, money obtained from importing drugs would be proceeds of the crime of drug trafficking.

In this paper, the term proceeds of crime also includes instruments of crime which is anything used to assist in the commission of a crime. For example, a boat used for people smuggling would be an instrument of the crime of people smuggling.

3.3 Agency-to-Agency Assistance

Mutual assistance and agency-to-agency assistance are separate tools although they are closely linked. Mutual assistance can occur where agency-to-agency assistance has already happened or is currently underway.

Under agency-to-agency assistance Australian law enforcement and regulatory agencies can share information informally with their foreign counterparts.

The term 'agency-to-agency assistance' is a generic term that encompasses both police-to-police assistance and cooperation between non-police agencies like the Australian Taxation Office (ATO) and the Australian Securities and Investment Commission (ASIC) with their counterparts in other countries.

Agency-to-agency assistance is discussed in more detail in Part 5 of this paper.

3.4 Extradition

Extradition allows one country to send a person to another country to face criminal charges or serve a sentence. It requires a Government to Government request.

As an example, extradition is used if a person commits an offence, such as murder, in Australia and flees to the United States of America (US). In that case, Australia could make an extradition request to the US for the arrest of the person in the US and his or her return to Australia to face prosecution.

The *Extradition Act 1988* governs international extradition matters in Australia.

Unlike some countries, the Australian Government extradites its nationals, taking the view that, generally, persons who have committed a crime should be tried and punished by the criminal justice system of the country in which they committed the crime, regardless of their citizenship.

In lieu of extradition, some countries prosecute their nationals themselves for crimes they may have committed in a foreign country. This can result in complex and lengthy mutual assistance requests to obtain the evidence from the country in which the alleged crime occurred. To address sovereignty issues, countries can instead extradite their nationals and then arrange for their return under the International Transfer of Prisoners scheme. This means that convicted persons would be returned to their country of nationality to serve any term of imprisonment.

The Australian Government Attorney-General's Department is currently conducting a Review of Australia's extradition arrangements. The

Minister released a discussion paper on extradition on 22 December 2005 and extensive public consultations were held in the first half of 2006 on that paper. The discussion paper and public submissions are available at <http://www.ag.gov.au/extraditionandma>.

For further information on extradition please visit <http://www.ag.gov.au/extraditionandma>

3.5 International Transfer of Prisoners

Australia's International Transfer of Prisoners scheme allows Australians who are imprisoned in certain countries to apply to return to Australia to serve the remainder of their sentences in an Australian prison.

For further information on the international transfer of prisoners please visit <http://www.ag.gov.au/itp>

The scheme also allows foreign prisoners who are imprisoned in Australia to apply to serve their sentences in certain foreign countries of which they are a national or with which they have community ties.

The *International Transfer of Prisoners Act 1997* governs Australia's International Transfer of Prisoners scheme.

Transfers can only occur where treaty arrangements exist between Australia and the foreign country. Currently, transfers are only able to take place between Australia and Thailand,

Hong Kong, and countries which are parties to the *Council of Europe Convention on the Transfer of Sentenced Persons*.

The scheme is entirely consent based. Transfers can only take place with the consent of the prisoner, the sending country and the receiving country.

Australia's International Transfer of Prisoners scheme can work effectively together with our extradition arrangements. Once a person has been extradited and prosecuted for a crime in a foreign country, the International Transfer of Prisoners scheme enhances their rehabilitation prospects by allowing the prisoner to serve their sentence in their home country.

Case Study – Interaction of International Crime Cooperation Tools

The United Kingdom police are investigating a drug trafficking offence. The alleged offender is Australian and has returned home and deposited the profits of the crime into an Australian bank account. The United Kingdom police initially contact the AFP and request a voluntary witness statement from a key witness to the drug trafficking who also lives in Australia. The United Kingdom Government then lay charges and make mutual assistance and extradition requests to the Australian Government. Australia uses the following combination of tools to assist the United Kingdom:

- extradition to return the alleged offender to the United Kingdom to be prosecuted for the crime
- mutual assistance to require the witness to give evidence by video link at the trial, and
- proceeds of crime mechanisms to locate, restrain, forfeit and share the profits of the drug trafficking offence to the United Kingdom Government.

The offender is convicted for the crime and sentenced to imprisonment in the United Kingdom. Under the International Transfer of Prisoners Scheme, the United Kingdom, Australia and the offender all consent to a transfer and the offender returns to Australia to serve the remainder of their sentence.