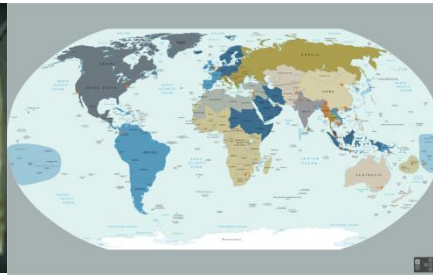




Australian Government
Attorney-General's Department

Mutual Assistance and Extradition



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Overview

- Mutual assistance / extradition
 - Key features
 - legal framework
 - grounds for refusal (death penalty)
 - statistics
 - timeframes

Mutual Assistance



What is Mutual Assistance?

- Formal Government to Government assistance for the purposes of obtaining evidence for a **criminal** investigation or prosecution
- a tool used to
 - obtain evidence located in foreign countries
 - identify and recover proceeds of crime
- Australian can *make* and *receive* mutual assistance requests to and from *any country* – mutual assistance is based on reciprocity
- A mutual assistance request is required when assistance cannot be obtained through informal means



When is mutual assistance required?

- *Examples:*
 - when the other country's law requires it
 - when material can only be obtained using coercive powers, or
 - when material is required in admissible form for court proceedings

What assistance can be provided?

- Non-coercive powers
 - Voluntary witness statements
- Coercive powers
 - Take evidence proceedings
 - Executing search warrants
 - Production of documents
 - Provision of material obtained by law enforcement authorities
 - Registering and enforcing proceeds of crime orders
 - Proceeds of crime action



Mutual assistance: grounds for refusal

MACMA section 8

Mandatory grounds for refusal

- Political offence
- Military offence
- Prosecution on account of race, sex, sexual orientation, religion, nationality or political opinions
- Prejudice to sovereignty, security or national interest
- Risk of torture

- Death penalty (following arrest, charge or conviction)
 - ‘Special circumstances’

Discretionary grounds for refusal

- Lack of dual criminality
- Prejudice to ongoing domestic investigation or proceedings
- Prejudice to safety of any person
- Excessive burden on resources
- Double jeopardy

Death Penalty

- Death penalty (in early stages of investigation)

How to make a MA request

Australian requests to foreign countries (outgoing MA requests)

- We draft the majority of outgoing requests in consultation with the relevant law enforcement or prosecution agency
- We can provide advice to requesting agencies about the assistance sought and timeframes

MA Questionnaire - information for ICCCA

- the purpose of the request
- all relevant information and alleged facts
- the subject of the investigation/prosecution
- the assistance or material sought and the reasons why
- details of informal assistance or prior contact with foreign country
- particular procedures to be followed to provide the assistance requested (e.g. providing a witness statement in a form that will be admissible in Australian courts)
- confidentiality requirements
- any time limits

Internet Records

- Subscriber data and IP log data
 - Can be obtained directly from **some** ISPs or through Interpol (police-to-police channels) or from Australian ISP offices
 - Will usually be provided for intelligence purposes only
 - May assist to further investigation, identify or exclude suspects
 - May assist to meet 'probable cause' in a MAR
 - Must be requested through MA to obtain in admissible form
- Content data
 - Can only be obtained through the use of coercive powers
 - **An MA request WILL be required for content.**

Preservation of Internet Records

- Internet records are perishable and need to be preserved as soon as possible before they are deleted from the ISP servers
- A preservation request takes a 'snap shot' of data at the time of the preservation
- Preservation requests can be made directly to the company in most cases, via email or through LEA portal
- Preservation is usually for **90 days** with an extension of a further 90 days being possible
- Investigators are responsible for monitoring expiry of the preservation and seeking extensions until the material is obtained



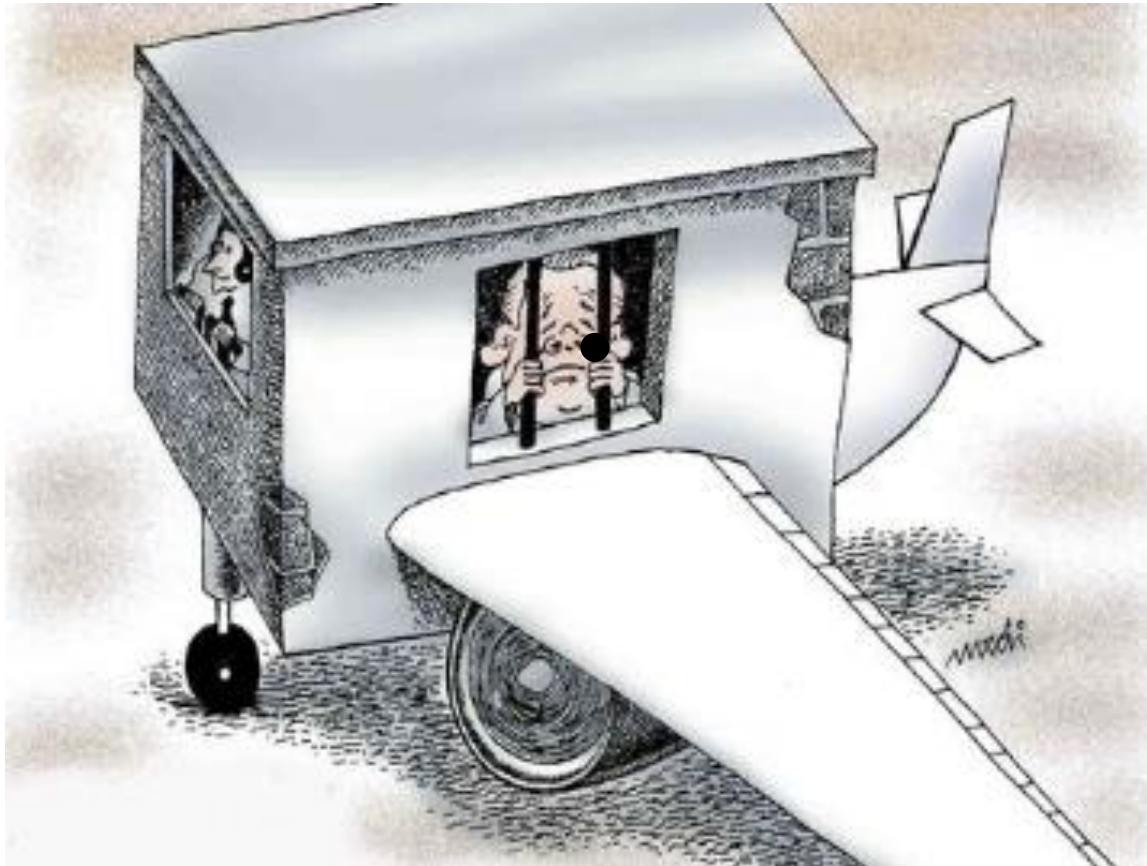
Timeframes

- Nature of the offending and the number and type of records sought
- MA requests for internet content data usually take **six months to 12 months** to be executed
- **Early** consultation with AGD is useful

Key messages: Mutual Assistance

- The MA process is used for the purpose of investigation and prosecution of serious criminal offences
- Contact us early to discuss assistance and time frames
- Priorities and capacity of the foreign country
 - Agencies need to be prepared to provide further information or support to foreign jurisdiction during MA process
- Timeframes will vary depending on the facts and complexities of each case





EXTRADITION

What is Extradition?

- Extradition is the formal Government to Government process used to return people from one country to another country either to:
 - face prosecution for criminal offences, or
 - serve a sentence of imprisonment.



Extradition vs Deportation

- **Extradition** is a government-to-government process requesting the return of a person for criminal prosecution/serve sentence.
- **Deportation** is a unilateral determination made by a country to remove a person on the basis that they have no right to be (for immigration purposes).

Extradition: Legal Framework

- Australia's extradition process is governed by the *Extradition Act 1988* (Cth)
- Australia can only receive an extradition request from a country declared under Australian regulations to be an 'extradition country'
- Australia can make an extradition request to any country – whether that country will accept depends on the country's domestic law and policy
- Australia has bilateral extradition treaties with over 35 countries
- Australia is a party to a number of multilateral conventions that contain extradition obligations

Key principles of extradition

- *Dual criminality* - conduct must be criminal in both the requesting and requested country
 - Bounced cheques
- *Speciality* – a person may only be surrendered for the offences for which extradition is granted
- *Extradition objections:*
 - political offence
 - military offence
 - ulterior purpose
 - prejudice at trial
 - double jeopardy

Extradition: death penalty

- ICCPR, Article 7: prohibition of torture, cruel inhuman and degrading treatment and punishment.
- Australia: politically bipartisan stance against DP.

Extradition: death penalty

- Section 15B Extradition Act:
 - AG may only determine that a person be surrendered to a foreign country if satisfied that there is no real risk that the DP will be carried out.
- Section 22:
 - Person only to be surrendered for extradition to a foreign country if foreign country has given an undertaking:
 - person will not be tried for the offence
 - if person is tried for the offence - death penalty will not be imposed on the person, or
 - if death penalty is imposed - will not be carried out.

Extradition statistics

- As at 26 April 2019:
 - 286 active extradition matters
 - 34 Australian requests
 - 71 foreign requests
 - 181 general enquiries
- In the 2017-2018 FY:
 - 10 foreign requests resulted in surrender
 - 9 Australian requests resulted in surrender
- Each extradition case officer is allocated approximately 20-25 active matters.

Timeframes

- Extradition can take many years, depending on:
 - complexity of offences
 - complexity of underlying criminal conduct
 - whether person contests extradition
 - Whether person waives extradition

Key message:

- Speak with us early

Extradition and mutual assistance contact details

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Questions?

