

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Federal Police

Question No. AE17/036

Senator McKim asked the following question at the hearing on 28 February 2017:

Senator McKIM: Thank you, I will place another couple of questions on notice about that. My final line of questions is with regard to the Australian Federal Police National Guideline on International Police-to-Police Assistance in Death Penalty Matters. Would there be any problem with providing a copy of that to the committee?

Mr Colvin: No problem at all. I think we have provided it to the committee before, and we will do it again.

The answer to the honourable senator's question is as follows:

Attached for the committee is a copy of the AFP National Guideline on international police-to-police assistance in death penalty situations.

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AFP National Guideline on international police-to-police assistance in death penalty situations

1. Disclosure and compliance

This document is marked **For Official Use Only** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the AFP National Guideline on information management.

Compliance

This instrument is part of the AFP's professional standards framework. The AFP Commissioner's Order on Professional Standards (CO2) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the Australian Federal Police Act 1979 (Cth).

2. Acronyms

AFP	Australian Federal Police
MIE	Manager International Engagement
NMIO	National Manager International Operations
PNG	Papua New Guinea
PROMIS	Police Real-time Online Management Information System

3. Definitions

Commissioner – means the Commissioner of Police of the AFP, as defined in s. 4 of the AFP Act.

Minister – means the Commonwealth minister responsible for the AFP.

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4. Guideline authority

This guideline was issued by the National Manager International Operations using power under s. 37(1) of the Australian Federal Police Act 1979 (Cth) as delegated by the Commissioner under s. 69C.

5. Introduction

This guideline governs police-to-police assistance in possible death penalty cases, and has been developed in consultation with the Attorney-General's Department.

6. Authority to provide information to foreign law enforcement agencies

The AFP is authorised to provide assistance and cooperate with foreign law enforcement agencies in accordance with the Australian Federal Police Act 1979 (Cth) and Ministerial Direction. Additionally, a number of United Nations Conventions, to which Australia is a signatory, further support the processes of conducting international police cooperation.

This guideline applies only to the provision of assistance, including the sharing of information, which can be provided on a police-to-police basis. This guideline does not apply to the provision of assistance that requires a mutual assistance request. In such cases, s. 8(1A) and s. 8(1B) of the Mutual Assistance in Criminal Matters Act 1987 (Cth) apply. That Act is administered by the Attorney-General's Department.

7. Policy for cooperation with foreign law enforcement agencies

On 29 January 2009, the Attorney-General approved a range of measures to strengthen current policy governing international crime cooperation in death penalty cases.

Assistance before detention, arrest, charge or conviction

The AFP is required to consider relevant factors before providing information to foreign law enforcement agencies if it is aware the provision of information is likely to result in the prosecution of an identified person for an offence carrying the death penalty.

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Senior AFP management (Manager /SES-level 1 and above) must consider prescribed factors before approving provision of assistance in matters with possible death penalty implications, including:

- the purpose of providing the information and the reliability of that information
- the seriousness of the suspected criminal activity
- the nationality, age and personal circumstances of the person involved
- the potential risks to the person, and other persons, in providing or not providing the information
- Australia's interest in promoting and securing cooperation from overseas agencies in combatting crime
- the degree of risk to the person in providing the information, including the likelihood the death penalty will be imposed.

Assistance after detention, arrest, charge or conviction

Ministerial approval is required in any case in which a person has been arrested or detained for, charged with, or convicted of an offence which carries the death penalty.

Assistance by AFP appointees in Papua New Guinea (PNG)

The Australian Government PNG Death Penalty Framework endorsed by the Attorney-General on 2 June 2014 sets out the whole-of-government approach to managing death penalty issues. Attachment A to that framework applies specifically to AFP appointees in PNG.

8. Approval process

Procedures before detention, arrest, charge or conviction

Where no person has been arrested or detained for, charged with, or convicted of an offence, and the AFP is aware the provision of information is likely to result in the prosecution of an identified person for an offence carrying the death penalty:

Step 1	The case officer or business area seeking assistance approval must complete the ' <u>Assistance in Potential Death Penalty Situations – Approval Request</u> ' form (AFP Investigator's Toolkit) and have it endorsed by their functional coordinator. Should assistance be required members should consult the International Network Engagement team and/or Post.
Step 2	The case officer sends the endorsed form via a PROMIS task to International Operations (IO-INET) for approval by MIE/NMIO.

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Procedures after detention, arrest charge or conviction

Where a person has been arrested or detained for, charged with, or convicted of an offence carrying the death penalty:

Step 1	<p>The case officer or business area seeking assistance approval prepares a ministerial brief with a covering executive brief to MIE/NMIO for the attention of the Deputy Commissioner Operations.</p> <p>The ministerial brief should cover the same prescribed factors (listed above) that an AFP delegate must consider.</p>
Step 2	<p>If approved, requests will be progressed to the Attorney-General or the Minister via the AFP Ministerial team.</p>

Procedures for AFP appointees in Papua New Guinea (PNG)

All AFP appointees in PNG must comply with the procedures and approval processes in the Papua New Guinea – Australia Policing Partnership Mission Commander’s Orders regarding assistance provided to PNG counterparts in matters involving offences for which the death penalty may be imposed.

9. Reporting

The Commissioner will report to the Minister annually on the nature and number of cases where assistance is provided to foreign law enforcement agencies in death penalty cases.

10. Further advice

Queries about the content of this guideline should be referred to the National Manager International Operations.

11. References

- *Australian Federal Police Act 1979* (Cth)
- *Mutual Assistance in Criminal Matters Act 1987* (Cth)
- Ministerial Direction (AFP Hub)
- Australian Government PNG Death Penalty Framework.

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