

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. 21

Senator Humphries asked the following questions at the hearing on 22 February 2011:

1. Can a copy of the AFP Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations be provided to the committee?
2. Can the committee be provided with copies of the biannual report to the Minister on the number and nature of circumstances in which assistance is provided in potential death penalty cases?
 - 2a. If not, is it possible for a redacted copy?
3. How many applications have been to Senior Management?
4. What have the outcomes been for each application?

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

1. The detailed AFP Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations is classified for AFP internal use only. In December 2009, the AFP issued new guidelines (incorporated in the Practical Guide) to govern the assistance provided to international law enforcement agencies in death penalty cases and released them via the AFP Website as follows:

The new guidelines require senior AFP management to take account of a series of relevant factors, before providing assistance in potential death penalty scenarios. The guidelines also ensure the consistent application of the policy is not undermined by differences in criminal procedures between foreign countries.

The factors taken into consideration are:

- the purpose of providing the information
- the likelihood of the authorities in the foreign country using the information only for that purpose
- the reliability of the information
- whether the information is exculpatory in nature
- nationalities of the person involved
- the person's age and personal circumstances
- the seriousness of the suspected criminal activity
- the potential risks to the person, and other persons, in not providing the information
- the degree of risk to the person in providing the information, including the likelihood the death penalty will be imposed, and

- Australia's interest in promoting and securing cooperation from overseas agencies in combating crime.

The new guidelines provide a robust and accountable framework to determine whether to engage in law enforcement efforts where there are potential death penalty implications.

The AFP Commissioner will report regularly to the Minister for Home Affairs under the new guidelines about the number and nature of circumstances in which assistance is provided in potential death penalty cases.

The previous guidelines required the Minister for Home Affairs to approve assistance in circumstances where a person had been charged with, or convicted of, an offence for which the death penalty may be imposed.

The new guidelines will require ministerial approval of assistance in any case in which a person has been arrested or detained in relation to, charged with, or convicted of, an offence which carries the death penalty.

This change recognises that under some legal systems, a suspect may be held under arrest, or detained, for long periods of time before formal charges are laid.

The guidelines also acknowledge the AFP must continue to engage foreign law enforcement agencies to combat transnational crime issues impacting upon Australia.

Australia has international obligations to provide assistance to other countries in combating transnational criminal activity under the Australian Federal Police Act 1979 and international treaties.

Through the AFP's International Network enquiries are conducted on behalf of all State, Territory and Federal law enforcement agencies with international law enforcement agencies.

Cooperation with neighbouring countries has proved integral to suppressing serious crimes within our region, including terrorism, trafficking in persons, child pornography and drug trafficking.

2. The bi-annual report to the Minister on the number and nature of circumstances in which assistance is provided in potential death penalty cases is classified and cannot be provided.

2a. A de-classified copy of the most recent biannual report for the period 1 July to 31 December 2010 is attached. The table show each request in chronological order.

3. During the period 1 July to 31 December 2010, 62 requests were made which all related to the release of information. More than one request may relate to any investigation or person.

All AFP members have responsibility for ensuring that any assistance provided on a police to police basis involving potential death penalty situations is reviewed in accordance with the guideline. Police may decide not to provide information without reference to senior management. These decisions are not counted in the 62 requests. Only those requests that fall within the ambit of the guideline are provided to AFP senior management for a decision.

The AFP International Network is responsible for the implementation of the guideline. This was originally achieved through the delivery of 'road-show' presentations to AFP members. Ongoing

education is facilitated through an AFP on-line learning Death Penalty module, targeted presentations to business areas, investigator courses and deploying overseas liaison officers.

The AFP International Network support teams have been restructured with a dedicated team responsible for marketing the services of the Network. An integral part of this strategy will be communication with Commonwealth, state and territory law enforcement agencies about the channels available for overseas enquiries and the requirements where requests have death penalty implications.

The AFP International Network support teams are the one point of contact for queries relating to death penalty implications. The teams filter all requests prior to providing them to AFP senior management for a decision.

Deployed AFP liaison officers act as an additional filter for any requests made direct to AFP Posts. The liaison officer's knowledge of the guideline and specific foreign country death penalty implications ensures that when a request has potential death penalty implications it is appropriately approved in accordance with the guideline before being communicated to foreign authorities.

The AFP Operations Coordination Centre (AOCC) facilitates the majority of state and territory police requests for overseas assistance through Interpol. The AOCC has been provided with training on the guideline to ensure that requests for assistance with death penalty implications are captured and where appropriate, forwarded to AFP senior management for a decision.

The guideline forms part of the AFP governance instruments framework and is made available on the AFP Intranet. The intranet also includes specific foreign country information relating to the application of the death penalty.

The AFP website provides AFP contact details for external stakeholders requesting police to police assistance where there are death penalty implications.

4. Of the 62 requests, 52 were approved and 10 were refused.

**Requests made pursuant to the AFP Practical Guide on International
Police-to-Police Assistance in Potential Death Penalty Situations
for the period 1 July – 31 December 2010**

Date Received	Number of Persons subject of release	Nature of request	Action Taken (Released/not released)
1/07/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
15/07/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
15/07/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
23/07/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
29/07/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
30/07/10	10	Transnational syndicate importing/exporting/manufacturing narcotics	Released
6/08/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Released
6/08/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
12/08/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
12/08/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
13/08/10	1	Murder investigation with the suspect being located overseas	Released
18/08/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
19/08/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
25/08/10	5	Transnational syndicate importing/exporting/manufacturing narcotics	Released
27/08/10	4	Transnational syndicate importing/exporting/manufacturing narcotics	Released
30/08/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
31/08/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
3/09/10	1	Person suspected of being involved in financing/organising terrorism or facilitating a terrorist act.	Released
7/09/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
7/09/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
8/09/10	6	Transnational syndicate importing/exporting/manufacturing narcotics	Released
8/09/10	1	Murder investigation with the suspect being located overseas	Released
8/09/10	1	Australian National Child Offence Register (ANCOR)	Released
20/09/10	13	Transnational syndicate importing/exporting/manufacturing narcotics	Released
22/09/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
23/09/10	4	Transnational syndicate importing/exporting/manufacturing narcotics	Released
24/09/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
28/09/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
28/09/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Released
29/09/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
5/10/10	5	Transnational syndicate importing/exporting/manufacturing narcotics	Released
5/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
6/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
6/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
7/10/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
7/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
8/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released

Date Received	Number of Persons subject of release	Nature of request	Action Taken (Released/not released)
9/10/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
11/10/10	2	Murder investigation with the suspect being located overseas	Released
12/10/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Released
18/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
18/10/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
19/10/10	4	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
20/10/10	7	Transnational syndicate importing/exporting/manufacturing narcotics	Released
21/10/10	6	Transnational syndicate importing/exporting/manufacturing narcotics	Released
27/10/10	2	Transnational syndicate importing/exporting/manufacturing narcotics	Released
29/10/10	5	Transnational syndicate importing/exporting/manufacturing narcotics	Released
1/11/10	4	Transnational syndicate importing/exporting/manufacturing narcotics	Released
2/11/10	7	Transnational syndicate importing/exporting/manufacturing narcotics	Released
8/11/10	5	Transnational syndicate involved in sexual servitude	Released
16/11/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Released
17/11/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
19/11/10	9	Transnational syndicate importing/exporting/manufacturing narcotics	Released
22/11/10	2	Murder investigation with the suspect being located overseas	Released
26/11/10	4	Transnational syndicate importing/exporting/manufacturing narcotics	Released
30/11/10	4	Transnational syndicate importing/exporting/manufacturing narcotics	Released
3/12/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
7/12/10	5	Transnational syndicate importing/exporting/manufacturing narcotics	Released
14/12/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Not Released
17/12/10	3	Transnational syndicate importing/exporting/manufacturing narcotics	Released
17/12/10	1	Transnational syndicate importing/exporting/manufacturing narcotics	Released
17/12/10	1	Person suspected of being involved in financing/organising terrorism	Released