

8 Refusal of assistance

- (1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Attorney-General:
- (a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or
 - (b) there are substantial grounds for believing that the request has been made with a view to investigating, prosecuting or punishing a person for a political offence; or
 - (ba) the request relates to a foreign order in relation to an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or
 - (c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, sexual orientation, religion, nationality or political opinions; or
 - (ca) there are substantial grounds for believing that, if the request was granted, the person would be in danger of being subjected to torture; or
 - (d) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that if it had occurred in Australia, would have constituted an offence under the military law of Australia but not also under the ordinary criminal law of Australia; or
 - (da) both of the following subparagraphs are satisfied:
 - (i) the request relates to a foreign order in relation to an offence;
 - (ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would have constituted an offence under the military law of Australia but not also under the ordinary criminal law of Australia; or
 - (e) the granting of the request would prejudice the sovereignty, security or national interest of Australia or the essential interests of a State or Territory.

(1A) A request by a foreign country for assistance under this Act must be refused if:

- (a) the request relates to the investigation, prosecution or punishment of:
 - (i) a person arrested or detained on suspicion of having committed an offence; or
 - (ii) a person charged with, or convicted of, an offence; and
- (b) the offence is one in respect of which the death penalty may be imposed in the foreign country;

unless the Attorney-General is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.

(1B) A request by a foreign country for assistance under this Act may be refused if the Attorney-General:

- (a) believes that the provision of the assistance may result in the death penalty being imposed on a person; and
- (b) after taking into consideration the interests of international criminal co-operation, is of the opinion that in the circumstances of the case the request should not be granted.

(2) A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General:

- (a) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received; or
- (b) both of the following subparagraphs are satisfied:
 - (i) the request relates to a foreign order in relation to an offence;

- (ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received; or
- (c) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where:
 - (i) the person has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or in Australia or another country; or
 - (ii) the person has undergone the punishment provided by the law of the foreign country, or of Australia or another country;
in respect of that offence or of another offence constituted by the same act or omission as that offence; or
- (d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Australia; or
- (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Australia); or
- (f) the provision of the assistance would impose an excessive burden on the resources of the Commonwealth or of a State or Territory; or
- (g) it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted.