

**TREATY BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE FRENCH REPUBLIC ON MUTUAL
ASSISTANCE IN CRIMINAL MATTERS**

**THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE
FRENCH REPUBLIC**

DESIRING to conclude a treaty on mutual assistance in criminal matters

HAVE AGREED as follows:

Article 1

Scope of application

1. The contracting Parties undertake to afford each other, in accordance with the provisions of this Treaty, the widest measure of mutual assistance in investigations or proceedings in respect of criminal offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the Requesting State.

2. This Treaty does not apply to:

- (a) the execution of arrest warrants;
- (b) the enforcement of criminal judgments, except for measures taken pursuant to Article 15 of this Treaty to seize or confiscate proceeds of crime; or
- (c) offences under military law which are not offences under ordinary criminal law.

Article 2

Central offices

1. The contracting Parties shall each appoint a Central Office to transmit and receive requests for the purpose of this Treaty. The Central Office of Australia shall be the Attorney-General's Department, Canberra, and the Central Office of France shall be the Ministère de la Justice. Each contracting Party shall notify the other of any change of its Central Office.

2. Requests for assistance shall be made through the Central Offices which shall arrange for the prompt carrying out of such requests.

Article 3

Other assistance

The provisions of this Treaty do not affect any obligations assumed by the contracting Parties under multilateral judicial assistance conventions to which both are party.

Article 4

Competent authorities

1. The competent authorities are, in Australia, the judicial authorities, the public prosecutors, the authorities responsible for investigations and proceedings related to criminal matters, the Attorney-General or his delegate and in France, the judicial authorities, including the Ministère Public.
2. A request from Australia which does not emanate from a judicial authority shall bear the signature of the Attorney-General or his delegate.

Article 5

Requests for assistance

1. The Requested Party shall, in accordance with its law, execute any requests relating to a criminal matter and addressed to it by the competent authorities of the Requesting Party for the purpose of investigation, procuring evidence or transmitting articles to be produced in evidence, records or documents, including documents of government agencies.
2. If expressly required by the Requesting Party, the Requested Party shall give notice of the date and place of execution of the request.
3. If the Requested Party consents, officials and interested persons of the Requesting State may be present at the examination of witnesses and, where appropriate, at the execution of other requests, and, to the extent that the laws of the Requested State allow, may question the witnesses or have them questioned.

Article 6

Particular procedure

If the Requesting Party expressly states a wish that a request described in the preceding article be executed in a certain manner, the Requested Party shall comply with that wish to the extent that its law allows. In particular, the Requesting Party may ask that the execution of a request be carried out by a judicial authority or that witnesses or experts give evidence on oath.

Article 7

Refusal to give evidence

1. A person who is required to give evidence in the Requested State may decline to give evidence where either:

(a) the law of the Requested State permits that witness to decline to give evidence in similar circumstances in proceedings in its territory; or

(b) the law of the Requesting State in similar circumstances permits that witness to decline to give evidence in such proceedings in its territory.

2. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Central Office of that State shall, upon request, provide a certificate to the Central Office of the Requested State as to the existence of that right. In the absence of evidence to the contrary, the certificate shall provide sufficient evidence as to the existence of that right.

Article 8

Handing over of property, records and documents

1. The Requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings. In that event, the Requested Party shall, upon request from the Requesting Party and whenever possible, provide certified copies of documents.

2. Any property, as well as original records or documents, handed over in execution of requests shall be returned by the Requesting Party to the Requested Party as soon as possible unless the latter Party waives their return.

Article 9

Service of judicial documents

1. The Requested Party shall, in conformity with its law, effect service of judicial documents which are transmitted to it for this purpose by the Requesting Party.

2. A request to effect service of a document requiring the appearance of a person shall be made to the Requested Party not less than 45 days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.

3. Service may be effected by simple transmission of the writ or record to the person to be served. If the Requesting Party expressly so requests, service shall be effected by the Requested Party, to the extent permitted by its law, in the manner requested by the Requesting Party.

4. The Requested Party shall forward to the Requesting Party proof of service of the documents, setting forth the facts, the method and the date of service; where appropriate this may be in the form of a receipt dated and signed by the person served. If service cannot be effected, the Requesting Party shall be so informed without delay and advised of the reasons.

Article 10

Appearance of witnesses or experts

1. If the Requesting Party considers the personal appearance of a witness or expert before the competent authorities necessary in order to give evidence in a criminal matter, it shall so mention in its request for service of the summons, or in its request for assistance with investigations relating to a criminal matter, and the Requested Party shall so inform the witness or expert. The Requested Party shall advise the Requesting Party of the reply given by the witness or expert.

2. In the case provided for under paragraph 1 of this Article the request or the summons shall indicate the approximate allowances payable and the travelling and living expenses refundable.

3. Upon request, the witness may receive, through the consular authorities of the Requesting Party, an advance to cover part or the whole of his or her travelling costs.

Article 11

Availability of persons in custody to give evidence or assist investigations

1. A person in custody in the Requested State may, at the request of the Requesting Party, be temporarily transferred to the Requesting State to give evidence, or assist in investigations, in relation to a criminal matter.

2. The Requested Party shall not transfer a person in custody to the Requesting State unless the person consents to that transfer.

3. While the person transferred is required to be held in custody under the law of the Requested State, the Requesting Party shall hold that person in custody and shall return that person in custody to the Requested State as soon as that person's presence is no longer required in the Requesting State or at such earlier time as is specified by the Requested Party at the time of granting the request.

4. Where the Requested Party so requests, the person's custody in the Requesting State shall cease, to the extent that it is based on the law of the Requested State, and such a person shall be treated as a person entitled to receive the allowances payable and expenses refundable under Article 10.

Article 12

Safe conduct

1. Where a person is in the Requesting State pursuant to a request made under Articles 10 or 11:

(a) that person shall not be prosecuted, detained, or subjected to any other restriction of personal liberty in the territory of the Requesting State, for any acts or convictions which preceded the person's departure from the Requested State; and

(b) that person shall not be compelled to give evidence in any proceeding other than the proceeding to which the request relates.

2. An accused or suspected person present in the Requesting State in answer to a document served by the Requested Party pursuant to this Treaty seeking that person's attendance to answer for acts or omissions which form the basis of investigations or proceedings against that person, shall not be prosecuted, detained or subjected to any other restriction of personal liberty in the Requesting State for acts or omissions which preceded that person's departure from the Requested State other than those specified in the document seeking the person's attendance.

3. The immunities provided for in this Article shall cease to apply if the person, being free to leave, has not left the Requesting State within a period of 45 consecutive days after that person has been officially notified that that person's presence is no longer necessary or, having left, has returned.

Article 13

Failure of witness or expert to appear

A witness or expert who has failed to answer a summons to appear, service of which has been requested or effected pursuant to this Treaty, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the Requesting State and is there again duly summoned and fails to comply.

Article 14

Search and seizure

1. The Requested Party shall, insofar as its law permits, carry out requests for search and seizure and delivery of material to the Requesting Party provided the information supplied, including additional information requested pursuant to Article 20, paragraph 1, if any, would justify such action under the law of the Requested State.

2. The Requested Party shall supply to the Requesting Party the information requested by that Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.

3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

Article 15

Proceeds of an offence

1. At the request of the Requesting Party and in accordance with this Treaty, the Requested Party shall take the necessary measures to ascertain if any proceeds from an offence which could subsequently be subject to confiscation according to the law of the Requested State, are on the territory within its jurisdiction and it shall inform the Requesting Party of the results of its enquiry. When presenting its request, the Requesting Party shall inform the Requested Party of the grounds it has for believing that the said proceeds are on its territory.

2. To the sole extent allowed by its law and without prejudice to the rights of any third party:

(a) if, pursuant to paragraph 1 of this Article, any proceeds suspected of being the result of an offence, are found, the Requested Party may, on request from the Requesting Party, take the necessary protective measures to ensure their possible confiscation;

(b) the Requested Party, at the request of the Requesting Party, may give effect to any final legal determination given in the Requesting State confiscating the proceeds of an offence.

3. Requests to be presented pursuant to paragraph 2 may be the subject of prior consultations between the Central Offices.

4. The Requested State shall retain the property referred to in paragraph 2(b). Any proceeds of crime confiscated in the Requested State pursuant to a request under paragraph 2(b) of this Article shall vest in the Requested State.

Article 16

Refusal of assistance

1. Assistance may be refused if:

(a) the request relates to an offence where the conduct constituting that offence would not constitute in the Requested State, a criminal offence if that conduct had taken place within the territory under its jurisdiction;

(b) the request relates to an offence that is regarded by the Requested Party as an offence of a political character;

- (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons;
- (d) the request relates to an offence against a law relating to taxation, customs duties or foreign exchange controls;
- (e) the request relates to an offence in respect of which the offender has been acquitted or pardoned or has served the sentence imposed;
- (f) the request relates to an offence which, according to the law of either State, could, if committed there, be no longer the subject of prosecution by reason of lapse of time or any other reason;
- (g) the request relates to an offence which is committed outside the territory of the Requesting State and the law of the Requested State does not provide for the prosecution of an offence of the same nature committed outside its territory;
- (h) provision of the assistance sought could prejudice an investigation or proceeding in the Requested State;
- (i) the Requested Party is of the opinion that the execution of the request would prejudice its sovereignty, security, *ordre public*, national interest or other essential interests.

2. Where in conformity with this Treaty a request may be refused, the Requested Party shall, before notifying its refusal, consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with those conditions.

Article 17

Contents of requests

1. Requests for assistance shall include the following information:
 - (a) the authority on whose behalf the request is made;
 - (b) the objects of, and reasons for, the request;
 - (c) except in cases of request for service of documents, a summary description of the facts constituting the offence and a statement of the relevant law;
 - (d) where possible the identity, location and nationality of any person concerned;
 - (e) a description of the assistance sought including, where appropriate, details of the information or evidence sought, and in particular any documents, records or articles to be produced or any questions to be put to witnesses or to experts; and

(f) details of any particular procedure that the Requesting Party wishes to be followed.

2. Where appropriate the Requesting Party may indicate any time limit within which the assistance must be provided.

Article 18

Confidentiality

1. If so requested, each contracting Party shall endeavour, to the extent permitted by its law, to keep confidential requests for assistance and responses thereto.

2. If, at the time of providing material in response to the request, the Requested Party so requests, the Requesting Party shall not use the information or evidence obtained, nor anything derived from either, for purposes other than those stated in the request without the prior consent of the Requested Party.

Article 19

Languages

Translation of requests and annexed documents shall not be required.

Article 20

Response to requests

1. If the Requested Party considers that the information contained in a request is not sufficient to enable the request to be dealt with in accordance with this Treaty, it may request additional information.

2. The Central Office of the Requested Party shall, as soon as possible, inform the Requesting Party of any circumstances, when they become known to that Central Office, which are likely to cause a significant delay in responding to the request.

3. The Central Office of the Requested Party shall as soon as possible inform the Requesting Party of any decision not to comply in whole or in part with a request for assistance and the reason for that decision.

Article 21

Certification and authentication

1. Documents or materials supporting a request for assistance pursuant to Article 15 of this Treaty shall be authenticated in accordance with paragraph 3 of this Article.

2. If requested by the Requesting Party documents or materials furnished by the Requested Party shall be similarly authenticated.

3. Documents and materials are duly authenticated for the purposes of this Treaty if they purport to be signed or certified by a Judge, Magistrate or officer in or of the sending State and to bear an official seal used in the sending State. However, where the documents are bound and sealed, a Judge, Magistrate or officer in or of the sending State need only sign or certify the first and last pages of the bound documents.

Article 22

Representation and expenses

1. To the extent permitted by laws of the Requested State, the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:

(a) the travelling expenses of a person to and from the territory of the Requested State, and any allowances or expenses payable to that person whilst in the Requesting State;

(b) the expenses associated with conveying custodial or escorting officers; and

(c) the fees of experts needed to fulfill the request.

3. If it appears that the execution of the request involves or is likely to involve exceptional expenses, the two Parties shall consult with a view to determining the conditions according to which the execution of the request may be pursued.

Article 23

Consultation

The two Parties shall consult, at the request of either, concerning the interpretation and the application of this Treaty.

Article 24

Entry into force and termination

1. Each contracting Party shall notify the other of the completion of the procedures required for the entry into force of this Treaty. This Treaty shall enter into force on the first day of the second month following the date of receipt of the last of these notifications.

2. Each contracting Party may terminate this Treaty at any time by forwarding through the diplomatic channel written notice of termination; termination shall take effect six months after receipt of this notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this treaty.

DONE at Paris on the fourteenth day of January nineteen hundred and ninety three in English and French, both texts being equally authentic.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

AUSTRALIA:

THE FRENCH REPUBLIC:

GARETH EVANS

ROLAND DUMAS

Notes to this effect were exchanged at Canberra on 4 February and 14 March 1994. The Treaty entered into force 1 May 1994.