


# United Nations Office on Drugs and Crime

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## TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF AUSTRALIA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF AUSTRALIA

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in law enforcement matters,

HAVE AGREED AS FOLLOWS:

### ARTICLE I

#### Definitions

For the purposes of this Treaty,

"central authority" means

- a) for Canada, the Minister of Justice or officials designated by that Minister;
- b) for Australia, the Attorney-General's Department, Canberra;

"competent authority" means any person or authority with responsibility for matters related to the investigation or prosecution of offences;

"offence" means

- a) in relation to Canada, any offence created by a law of Parliament that may be prosecuted upon indictment, or an offence created by a Legislature of a Province and specified in the Annex;
- b) in relation to Australia, any offence against the law of Australia or a part of Australia that falls or would fall within the jurisdiction of its courts and for which the penalty is a term of imprisonment of one year or more;

"request" means a request made under this Treaty.

### ARTICLE II

#### Scope of Application

1. The Parties shall provide, in accordance with the provisions of this Treaty, mutual assistance in all matters relating to the investigation, prosecution and suppression of offences.

2. Assistance shall include:
  - a) exchanging information and objects;
  - b) locating or identifying persons, objects and sites;
  - c) serving documents;
  - d) taking of evidence and obtaining of statements of persons;
  - e) executing requests for searches and seizures;
  - f) providing documents and records;
  - g) measures to locate, restrain and forfeit the proceeds of crime; and
  - h) facilitating the availability of prisoners and other persons, with their consent, to give evidence or assist investigations.
3. The provisions of this Treaty shall not give rise to a right on the part of a private party to obtain or exclude any evidence or to impede the execution of a request.

### ARTICLE III

#### Other Assistance

The Parties, including their competent authorities, may provide and continue to provide assistance pursuant to other agreements, arrangements or practices.

### ARTICLE IV

#### Requests

1. Requests and responses thereto shall be transmitted directly between the central authorities.
2. Requests shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested State, requests may be made orally but shall be confirmed in writing thereafter.

### ARTICLE V

#### Contents of Requests

1. A request shall contain such information as the Requested State requires to execute the request, including:
  - a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
  - b) a description of the nature of the investigation or proceedings including a statement setting out the relevant facts and laws;
  - c) except in cases of requests for service of documents, a description of the essential acts or omissions or matters alleged or sought to be ascertained;
  - d) the purpose for which the request is made and the nature of the assistance sought;
  - e) details of any particular procedure or requirement that the Requesting State wishes to be followed;

- f) specification of any time limit within which compliance with the request is desired; and
  - g) any special requirements for confidentiality and the reasons therefor.
2. Requests for assistance may also, the extent necessary, contain the following information:
- a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
  - b) a statement as to whether sworn or affirmed evidence or statements are required;
  - c) a description of the information, statement or evidence sought;
  - d) a description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated; and
  - e) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.
3. The Requesting State shall supply such additional information as the Requested State considers necessary to enable the request to be fulfilled.

## ARTICLE VI

### Refusal or Postponement of Assistance

1. Assistance may be refused when in the opinion of the Requested State the execution of the request would seriously impair its sovereignty, national security or other essential public interests or for any reason provided by its domestic law.
2. Assistance may be refused if:
- a) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, constitute an offence; or
  - b) provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State.
3. The Requested State may postpone assistance if execution of the request would interfere with any ongoing proceeding or investigation in the Request State.
4. Before denying or postponing assistance pursuant to this Article, the Requested State shall, through its central authority,
- a) promptly inform the Requesting State of the reason for considering denial or postponement; and
  - b) consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.
5. If the Requesting State accepts assistance subject to the terms and conditions referred to in paragraph 4 (b), it shall comply with such terms and conditions.

## ARTICLE VII

### Execution of Requests

1. A request shall be executed promptly in accordance with the law of the Requested State and, where permitted by the law of the Requested State, in accordance with the directions stated in the request.
2. Where required by the Requested State, the Requesting State, after the completion of the proceedings, shall return to the Requested State material provided by the Requested State in fulfilment of the request.

## ARTICLE VIII

### Protecting Confidentiality and Restricting Use of Evidence and Information

1. The Requested State shall keep confidential a request, its contents, supporting documents and any action taken pursuant to the request, except to the extent necessary to execute it, or where the disclosure is specifically authorized by the Requesting State in accordance with its own terms and conditions.
2. If the request cannot be executed without breaching confidentiality requirements stated in the request, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
3. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished be kept confidential or be disclosed or used only subject to terms and conditions it may specify.
4. The Requesting State shall not use information or evidence for a prosecution of an offence for which mutual assistance may be refused or is not provided for under this Treaty without the prior consent of the Requested State.

## ARTICLE IX

### Taking of Evidence in the Requested State

1. Where, pursuant to a request for assistance, a person is to give evidence in the Requested State for the purpose of proceedings in the Requesting State, the parties to the relevant proceedings in the Requesting State, their legal representatives or representatives of the Requesting State may, subject to the laws of the Requested State, appear and question the person giving that evidence.
2. For the purposes of requests under this Article the Requesting State may specify any particular questions to be put to a witness.
3. A person who is required to give evidence in the Requested State pursuant to a request for assistance may decline to give evidence where:
  - a) the law of the Requested State would permit or require that person to decline to give evidence; or
  - b) where the law of the Requesting State would permit or require that person to decline to give evidence.
4. If any person in the Requested State claims that there is a right or obligation to decline to give evidence under the law of the Requesting State, the Requesting State shall provide to the Requested State a certificate of a person designated by the central authority of the Requesting State with respect thereto. The certificate provides evidence of its contents.

## ARTICLE X

### Availability of Consenting Prisoners to Give Evidence or Assist Investigations

1. A person in custody in the Requested State whose presence is requested in the Requesting State for the purposes of this Treaty shall be transferred for that purpose, provided the person in custody consents and the Requested has no reasonable basis to deny the request.
2. The Requesting State shall have the authority and duty to keep the person in custody at all times and return the person to the custody of the Requested State at the conclusion of the proceedings in relation to which the transfer to the Requesting State was sought or at such earlier time as the person's presence is no longer required.
3. Where the sentence imposed on a person transferred under this Article expires while the person is in the Requesting State, that person shall be released and thereafter treated as a person referred to in Article XI.

## ARTICLE XI

### Availability of Other Consenting Persons to Give Evidence or Assist Investigations in the Requesting State

1. A request may be made for assistance in facilitating the availability of a person to assist in an investigation, or to appear as a witness in proceedings in relation to an offence in the Requesting State, except where that person is the subject of the investigation or the person charged with the offence.
2. The Requested State shall, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting State, request the person to consent to assisting in the investigation or to appearing as a witness in proceedings and shall take all steps necessary to facilitate the request.

## ARTICLE XII

### Safe Conduct

1. When the Requesting State wishes the Requested State to assist it in making a person available to give evidence or assist in an investigation in the Requesting State, the Requesting State shall provide an adequate undertaking that the person will not, during the period he or she is required for the purpose of assisting an investigation or giving evidence or for a period of twenty days after the person is officially notified that his or her presence is no longer required, be subject to detention, prosecution, punishment or civil suit (being a civil suit to which the person could not be subjected if he or she were not in the Requesting State), in respect of an act or omission which preceded the person's departure from the Requested State.
2. A person made available for the purposes of Article X or XI shall not without that person's consent be required to give evidence in any proceeding other than the proceeding to which the request relates.
3. A person appearing before an authority in a Requesting State pursuant to a request under Article X or XI shall not be subject to prosecution based on such testimony except that person shall be subject to the laws of that State in relation to contempt and perjury.
4. A person who does not consent for the purposes of Article X or XI shall not by reason thereof, be liable to any penalty or be submitted to any coercive measure notwithstanding any contrary statement in the request.

## ARTICLE XIII

## Search and Seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or things seized and the circumstances of the seizure.
2. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized documents, records or things which may be delivered to the Requesting State.

## ARTICLE XIV

### Proceeds of Crime

1. Upon request, the Requested State shall endeavour to locate any property or assets of a person against whom a forfeiture or confiscation order, pecuniary penalty order, substituted property order, fine in lieu of such order, or any other order having a similar effect, has been made or may be made by a court in the Requesting State in relation to criminal conduct.
2. Where pursuant to paragraph 1, property or assets are located, the Requested State may assist with or initiate such proceedings as are permitted by its law to prevent any dealing in, transfer or disposal thereof, pending a final determination in respect of that property or those assets in any proceedings before a court of the Requesting or Requested State.
3. The Requested State may give effect to the extent possible under its domestic law to an order mentioned in paragraph 1 made by a court of the Requesting State or initiate appropriate proceedings in relation to the property or assets found in the Requested State.
4. In the application of this Article the rights of bona fide third parties shall be respected.

## ARTICLE XV

### Service of Documents

1. The Requested State shall serve any document transmitted to it for the purpose of service.
2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance.
3. The Requested State shall return a proof of service in the manner required by the Requesting State.

## ARTICLE XVI

### Publicly Available and Official Documents

1. The Requested State shall provide copies of documents and records that are available to the public.
2. The Requested State may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

## ARTICLE XVII

## Authentication

Each Contracting Party shall, upon request, authenticate any documents or other material to be transmitted to the other Party under this Treaty. Documents are authenticated if:

- a) they purport to be signed or certified by a judge, magistrate or officer in or of the sending State; and
- b) they purport to be authenticated by the oath or affirmation of a witness or to be sealed with an official seal of the sending State or of a Department thereof.

## ARTICLE XVIII

### Representation and Costs

1. Subject to paragraphs 2 and 3, the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.
2. The Requested State shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting State shall bear:
  - a) the expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person while in the Requesting State pursuant to a request under Article X or XI;
  - b) the expenses associated with conveying custodial or escorting officers; and
  - c) fees of experts.
3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request or the request involves any of the assistance set out in Article XIV of this Treaty, the parties shall consult to determine the terms and conditions under which the execution of the request may continue including legal representation and responsibility for costs of legal representation.

## ARTICLE XIX

### Consultation

1. The Parties shall consult promptly, at the request of either, concerning the interpretation and the application of this Treaty.
2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

## ARTICLE XX

### Entry into Force and Termination

1. This Treaty shall enter into force one month after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. This Treaty shall apply to requests made pursuant to it whether or not the offences occurred prior to this Treaty entering into force.
3. Either Party may terminate this Treaty by giving written notice to the other Party at any time.

Termination shall become effective six months after receipt of such notice.

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

DONE in duplicate, in the English and French languages, each language version being equally authentic, at Ottawa this 19<sup>th</sup> day of June, 1989.

FOR THE GOVERNMENT OF CANADA

Doug Lewis

FOR THE GOVERNMENT OF AUSTRALIA

Michael Tate

#### ANNEX

The definition of offence includes offences created by the Legislature of a Province of Canada in the following categories:

- a) consumer protection;
- b) environmental protection;
- c) securities; and
- d) wildlife protection.

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