

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

1. Disclosure and compliance

This document is classified **OFFICIAL** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on information management](#).

This instrument forms part of the AFP Governance Instrument Framework (GIF) as defined in the [AFP Commissioner's Order on governance \(CO1\)](#). The [AFP Commissioner's Order on professional standards \(CO2\)](#) and [AFP Commissioners Order on security \(CO9\)](#) set the framework for the conduct expected of AFP appointees through obligations and best practice to help maintain the safety and security of AFP information, operations, assets and people. Inappropriate departures from the provisions outlined within AFP governance instruments may constitute a breach and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Guideline authority

This guideline was issued by the Deputy Commissioner International and Specialist Capabilities using power under s. 37(1) of the [AFP Act](#) as delegated by the Commissioner under s. 69C.

3. Introduction

This guideline governs police-to-police assistance and cooperation, including sharing information, in situations where an identified person/s, regardless of nationality, may be exposed to the death penalty. The guideline helps control AFP [Enterprise risks](#) (2, 3, 4 and 5) as well as risks to the AFP emanating from police cooperation in a death penalty context, notwithstanding the Australian Government opposes the death penalty in all circumstances for all people, and supports the universal abolition of the death penalty. Australia's approach to government-to-government assistance or police cooperation in a death penalty context are governed by this Guideline, the Extradition Act 1988 (Cth) and the Mutual Assistance in Criminal Matters Act 1987 (Cth). The AFP maintains ongoing close engagement on death penalty matters with the Attorney-General's Department and the Department of Foreign Affairs and Trade.

The AFP's primary aim is to enforce Commonwealth criminal law, contribute to combating complex, transnational, serious and organised crime that impacts on the Australian community and Australia's national interests. The AFP collaborates with national and international partners to enhance safety and provide a more secure regional and global environment. To achieve this aim, the AFP cooperates with foreign police and law enforcement agencies consistent with Government policy in relation to crimes that attract the death penalty.

4. Authority to provide information to foreign law enforcement agencies

The AFP is authorised to provide police services and police support services for the purpose of assisting or cooperating with foreign law enforcement agencies in accordance with the [AFP Act](#) and the [Ministerial Direction](#). Additionally, a number of United Nations Conventions, to which Australia is a signatory, further support the processes of international police cooperation.

This guideline applies only to assistance, including the sharing of information and cooperation 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 AGD.

5. Policy for cooperation with foreign law enforcement agencies

In May 2016, the Joint Standing Committee on Foreign Affairs, Defence and Trade in its report: *A world without the death penalty: Australia's Advocacy for the Abolition of the Death Penalty*, made recommendations in relation to the AFP National Guideline on international police-to-police assistance in death penalty situations.

This guideline has been updated to reflect the Australian Government response to the Joint Standing Committee's recommendations.

6. Role of the Sensitive Investigations Oversight Board for Death Penalty Requests

Matters involving the Death Penalty are deemed *sensitive* as per the [AFP National Guideline on sensitive investigations](#).

The SIOB is a strategic oversight body for AFP investigations determined to be sensitive investigations, as defined within that guideline.

All Death Penalty requests whether pre or post arrest require SIOB oversight and decision by the relevant Deputy Commissioner as the appropriate delegate.

(For further details on sensitive investigations and related considerations, refer to the [AFP National Guideline on sensitive investigations](#) and the [SIOB Terms of Reference](#).)

7. Provision of assistance and cooperation

7.1 Assistance and cooperation before detention, arrest, charge or conviction (pre-arrest)

If an AFP appointee is aware the provision of assistance to, or cooperation with, a foreign law enforcement agency is likely to result in an identified person/s, regardless of nationality, being detained, arrested, charged or prosecuted for an offence carrying the death penalty, the AFP appointee must complete and submit an [Assistance in Death Penalty Situations Approval Request Form](#) for consideration by CIE.

CIE must provide initial advice and determine the risk category based on the relevant factors detailed in section 7.2 of this guideline. The Death Penalty request must then go from CIE to the SIOB via the relevant International Assistant Commissioner, irrespective of the risk category.

The cleared request, should contain pertinent information for the SIOB to consider, meaningfully discuss, and assess the relevant risks. Requests must be submitted to the SIOB Secretariat via s 47E(d)

7.2 Relevant factors

CIE must determine the Death Penalty Request Risk Category, taking into consideration relevant factors, including:

1. the purpose of providing the assistance
2. the seriousness of the suspected criminal activity
3. the investigation plan and strategy
4. whether the assistance is exculpatory in nature
5. the extent to which the death penalty is imposed and carried out in the relevant foreign country
6. the reliability of any information to be released
7. the nature of the AFP's relationship with the relevant foreign country and level of confidence in the foreign police or law enforcement agency using the assistance only for the purpose for which the assistance was sought and/or provided
8. the age and personal circumstances of the person/s who is/are the target of the investigation
9. the level of risk for the person, associated with provision of the information, including the likelihood the death penalty will be imposed
10. the level of risk to any potential victim/s, associated with providing or not providing the assistance
11. the level of risk to other persons, associated with providing or not providing the assistance, including the public safety risk
12. Australia's interest in promoting and securing cooperation from the foreign police or law enforcement agency in combatting crime.

7.3 Death Penalty Request Risk Category and Authorised Approving Delegate

The SIOB considers the Death Penalty Request against relevant factors as per section 7.2 of this guideline in conjunction with the considerations of CIE to determine if the AFP will provide assistance or cooperate with a foreign law enforcement agency in death penalty situations:

Low Risk Category

Involves the provision of assistance to, including the release of information, or cooperation with, a foreign law enforcement agency where the nature of the investigation is such that there are few confirmed facts or details about the suspected criminal conduct. The provision of assistance in such matters is generally for the purpose of identifying possible lines of inquiry to assist investigations in Australia and/or in other countries, or to promote the commencement of an investigation overseas.

Examples of information that may be shared in low risk releases include: details of a consignor and/or consignee, call charge records, telecommunication subscriber checks, criminal records, operational intelligence, movement checks, financial records, and personal indices.

Medium Risk Category

Involves the provision of assistance to, including the release of information, or cooperation with, a foreign law enforcement agency which is likely to result in the identification of an offender who may be detained, arrested, charged or prosecuted for a death penalty offence or the immediate detection of criminal offences which may carry the death penalty.

It includes requests where direct contact, overt or covert is sought, such as surveillance or undercover operations.

High Risk Category

Involves the release of significant inculpatory information or the provision of assistance to a foreign law enforcement agency which is likely to be used in or to lead to the detention, arrest, charge or prosecution of an identified person/s for a death penalty offence.

In some instances, the AFP may release information assessed as 'high risk' to a foreign law enforcement agency because the delegate considers the release necessary to prevent a serious offence to a person, to protect an innocent agent, or to prevent significant harm to society.

7.4 Assistance after detention, arrest, charge or conviction (post-arrest)

Post-arrest is considered any case in which an identified person/s, regardless of nationality, has been arrested or detained for, charged with, or convicted of, an offence which carries the death penalty. All post-arrest Death Penalty Requests require a Ministerial Brief to be prepared for SIOB endorsement prior to Ministerial approval. CIE must provide initial advice and determine the risk category based on the relevant factors detailed in section 7.2 of this guideline.

The Ministerial Brief must contain pertinent information for the SIOB and subsequently the Minister to consider, meaningfully discuss and assess against the relevant risks. The Ministerial Brief and supporting material must be submitted to the SIOB Secretariat, once cleared via the relevant International Assistant Commissioner.

8. When SIOB delegation is not required

If an AFP appointee has considered a potential death penalty situation in accordance with this guideline, and has determined that it is **not likely** the provision of assistance to, or cooperation with, a foreign law enforcement agency will result in an identified person/s, regardless of nationality, being detained, arrested, charged or prosecuted for an offence carrying the death penalty, the appointee must make an accountable AFP record (eg diary, email, PROMIS) of that decision. That decision must be reviewed and endorsed by the relevant specialised or regional commander.

9. Death Penalty Request process

9.1 Procedures before detention, arrest, charge or conviction (pre-arrest)

Where no person/s has been detained or arrested for, charged with, or convicted of an offence, and an AFP appointee is aware that the provision of assistance will likely result in the prosecution of an identified person/s for an offence carrying the death penalty, the following steps must be followed:

Step 1	Following consultation with the relevant AFP International Post, the case officer seeking assistance approval must complete the ' Assistance in Death Penalty Situations Approval Request Form ' (DPR) in consultation with IC-OET via s 47E(d) . This also includes completion of Attachment A within the DPR which details the assistance to be provided.
Step 2	Regional superintendent or SO (for requests originating from Post) endorses the DPR through the relevant specialised commander/regional commander and submits to s 47E(d)
Step 3	IC-OET reviews the DPR, liaises with the relevant Command and submits to SIOC.
Step 4	SIOC reviews the DPR and submits to CIE for review.
Step 5	CIE must provide initial advice and determine the risk category based on the relevant factors detailed in section 7.2 of this guideline.
Step 6	CIE must provide the DPR to the relevant International Assistant Commissioner.
Step 7	Once cleared by the relevant International Assistant Commissioner, the DPR is submitted to SIOB via s 47E(d) . The SIOB considers the DPR and makes the decision.
Step 8	Documentation for the approved DPR is returned to the relevant Command for actioning in conjunction with the relevant AFP Post. Non-approved DPRs are returned to the relevant Command.

9.2 Procedures following detention, arrest, charge or conviction (post-arrest)

Where a person has been arrested or detained for, charged with, or convicted of, an offence carrying the death penalty, the following steps must be followed, before the provision of assistance:

Step 1	Following consultation with the relevant AFP International Post and IC-OET, the case officer seeking assistance approval must prepare a Ministerial Brief. The Ministerial Brief should address the relevant factors (as detailed in s 7.2 of this guideline) that are required to be considered by the SIOB. The Ministerial Brief and supporting material must be submitted to CIE.
Step 2 (a)	CIE consults with the relevant DFAT Regional Division Head and the AGD Treaties Division.
Step 2 (b)	Concurrent to Step 2 (a) the relevant SO consults with the relevant DFAT Head of Mission.
Step 3	Following consultation and input from DFAT and AGD, CIE submits the Ministerial Brief to the relevant International Assistant Commissioner.
Step 4	Once cleared by the relevant International Assistant Commissioner, the Ministerial Brief is submitted to SIOB via s 47E(d)

Step 5	If the Ministerial Brief is approved by the SIOB, it is progressed to the Minister via the AFP Ministerial Team.
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10. Reporting

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

International Command Americas, Africa, Middle East & Europe is responsible for mandatory reporting required to the Minister on the nature and number of cases where assistance is provided to foreign law enforcement agencies in death penalty cases.

11. Further advice

Enquiries in relation to the content of this guideline should be referred to via s 47E(d)

12. References

Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Mutual Assistance in Criminal Matters Act 1987](#) (Cth)

AFP governance instruments

- [AFP Commissioner’s Order on governance \(CO1\)](#)
- [AFP Commissioner’s Order on professional standards \(CO2\)](#)
- [AFP Commissioner’s Order on security \(CO9\)](#)
- [AFP National Guideline on information management](#)
- [AFP National Guideline on sensitive investigations](#)

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Other sources

- [Sensitive Investigations Oversight Board Terms of Reference](#)
- [Assistance in Potential Death Penalty Situations](#)
- [Better Practice Guide on Ministerial Briefings for Investigations](#)
- [Ministerial Direction](#)
- [Assistance in Potential Death Penalty Situations – Approval Request Form](#)
- [SIOB Briefing Paper – Death penalty request](#)

AND PUBLISHED PURSUANT TO THE
FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH)

13. Shortened forms

AFP	Australian Federal Police
AGD	Attorney-General’s Department
CIE	Commander International Engagement
DFAT	Department of Foreign Affairs and Trade
DPR	Death Penalty Request
DPR Form	Death Penalty Request Form
GIF	Governance Instrument Framework

IC - OET	International Command - Operational Engagement Team
SIOB	Sensitive Investigations Oversight Board
SIOC	Superintendent International Operations Centre
SO	Senior Officer

*Relevant International Assistant Commissioner means either Assistant Commissioner Pacific Asia or Assistant Commissioner Americas, Africa, Middle East and Europe

14. Definitions

AFP appointee means a deputy commissioner, AFP employee, special member or special protective service officer and includes a person:

- engaged under section 35 of the AFP Act as a consultant or contractor to perform services for the AFP and determined under section 35(2) of the AFP Act to be an AFP appointee
- engaged overseas under section 69A of the AFP Act
- seconded to the AFP under section 69D of the AFP Act.

(See section 4 of the AFP Act.)

Commissioner means the Commissioner of Police of the AFP, as defined in s. 4 of the [AFP Act 1979](#).

Delegate means the AFP appointee authorised as an approving delegate, as detailed in s. 6 of this guideline.

Death Penalty Risk Category is the risk category (low, medium or high) of the request to assist, or cooperate with, a foreign law enforcement agency in a death penalty situation, as determined by CIE following the assessment of the request and consideration of the relevant factors as detailed in s. 7.2 and the risk categories as detailed in s. 7.3 of this guideline.

Death Penalty Situation means a situation in which AFP appointees are considering sharing information with, or providing cooperation with, a foreign jurisdiction in relation to an identified individual that could result in the application of the death penalty being imposed by that foreign jurisdiction.

Minister means the Commonwealth Minister responsible for the AFP.

FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH)

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