

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

1. Disclosure and compliance

This document is marked **For Official Use Only** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the AFP National Guideline on information management.

Compliance

This instrument is part of the AFP's professional standards framework. The AFP Commissioner's Order on Professional Standards (CO2) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Acronyms

AFP	Australian Federal Police
MIN	Manager International Network
NMSOC	National Manager Serious and Organised Crime
PNG	Papua New Guinea
PROMIS	Police Real-time Online Management Information System

3. Definitions

Commissioner – means the Commissioner of Police of the AFP, as defined in s. 4 of the AFP Act.

Minister – means the Commonwealth minister responsible for the AFP.

4. Guideline authority

This guideline was issued by the Deputy Commissioner Operations using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C.

5. Introduction

This guideline governs police-to-police assistance in possible death penalty cases, and has been developed in consultation with the Attorney-General's Department.

6. Authority to provide information to foreign law enforcement agencies

The AFP is authorised to provide assistance and cooperate with foreign law enforcement agencies in accordance with the [Australian Federal Police Act 1979](#) (Cth) and Ministerial Direction. Additionally, a number of United Nations Conventions, to which Australia is a signatory, further support the processes of conducting international police cooperation.

This guideline applies only to the provision of assistance, including the sharing of information, 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 the Attorney-General's Department.

7. Policy for cooperation with foreign law enforcement agencies

On 29 January 2009, the Attorney-General approved a range of measures to strengthen current policy governing international crime cooperation in death penalty cases.

Assistance before detention, arrest, charge or conviction

The AFP is required to consider relevant factors before providing information to foreign law enforcement agencies if it is aware the provision of information is likely to result in the prosecution of an identified person for an offence carrying the death penalty.

Senior AFP management (Manager /SES-level 1 and above) must consider prescribed factors before approving provision of assistance in matters with possible death penalty implications, including:

- the purpose of providing the information and the reliability of that information
- the seriousness of the suspected criminal activity
- the nationality, age and personal circumstances of the person involved
- the potential risks to the person, and other persons, in providing or not providing the information
- Australia's interest in promoting and securing cooperation from overseas agencies in combatting crime
- the degree of risk to the person in providing the information, including the likelihood the death penalty will be imposed.

Assistance after detention, arrest, charge or conviction

Ministerial approval is required in any case in which a person has been arrested or detained for, charged with, or convicted of an offence which carries the death penalty.

Assistance by AFP appointees in Papua New Guinea (PNG)

The Australian Government PNG Death Penalty Framework endorsed by the Attorney-General on 2 June 2014 sets out the whole-of-government approach to managing death penalty issues. Attachment A to that framework applies specifically to AFP appointees in PNG.

8. Approval process

Procedures before detention, arrest, charge or conviction

Where no person has been arrested or detained for, charged with, or convicted of an offence, and the AFP is aware the provision of information is likely to result in the prosecution of an identified person for an offence carrying the death penalty:

Step 1	The case officer or business area seeking assistance approval must complete the 'Assistance in Potential Death Penalty Situations – Approval Request' form (AFP Investigator's Toolkit) and have it endorsed by their functional coordinator. Should assistance be required members should consult the International Operations team and/or Post.
Step 2	The case officer sends the endorsed form via a PROMIS task to International Operations (INTN-OPS) for approval by MIN/NMSOC.

Procedures after detention, arrest charge or conviction

Where a person has been arrested or detained for, charged with, or convicted of an offence carrying the death penalty:

Step 1	The case officer or business area seeking assistance approval prepares a ministerial brief with a covering executive brief to MIN/NMSOC for the attention of the Deputy Commissioner Operations. The ministerial brief should cover the same prescribed factors (listed above) that an AFP delegate must consider.
Step 2	If approved, requests will be progressed to the Attorney-General or the Minister via the AFP Ministerial team.

Procedures for AFP appointees in Papua New Guinea (PNG)

All AFP appointees in PNG must comply with the procedures and approval processes in the Papua New Guinea – Australia Policing Partnership Mission Commander's Orders regarding assistance provided to PNG counterparts in matters involving offences for which the death penalty may be imposed.

9. Reporting

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

10. Further advice

Queries about the content of this guideline should be referred to NMSOC.

11. References

- [Australian Federal Police Act 1979](#) (Cth)
- [Mutual Assistance in Criminal Matters Act 1987](#) (Cth)
- Ministerial Direction (AFP Hub)
- Australian Government PNG Death Penalty Framework.

INFORMATION PUBLISHED UNDER
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PNG FRAMEWORK – INTERNATIONAL DEPLOYMENT GROUP

APPLICATION OF WHOLE OF GOVERNMENT DEATH PENALTY FRAMEWORK TO AUSTRALIAN FEDERAL POLICE ‘FRONTLINE ADVISORY’ DEPLOYMENT TO PAPUA NEW GUINEA

Australia has a long-standing policy of opposition to the death penalty. It has abolished the death penalty in Australia and continues to advocate the universal abolition of the death penalty. In line with that policy, this PNG Annexure to the *AFP National Guideline on International Police – to-Police Assistance in Death Penalty Situations* (National Guideline) sets out the whole-of-government approach to managing death penalty issues in PNG for AFP (International Deployment Group) officers deployed to Papua New Guinea (PNG).

The National Guideline will continue to apply to requests for assistance through the International Network, as stated in Part 7. This annexure recognises that the type of assistance to be provided in PNG is different to that usually provided under the National Guideline. The AFP deployees to PNG are in ‘frontline advisory’ roles and will be providing training and assistance in-country to the RPNGC.

AFP officers deployed to PNG in frontline advisory roles may assist their PNG counterparts in matters involving offences for which the death penalty may be imposed in PNG in the following circumstances:

1) Training

a) General training by the AFP

As part of the deployment to PNG, the AFP will provide general policing training to the RPNGC. Provision of this training by AFP officers does not require approval.

b) ‘In situ training’ – pre and post-arrest

Regardless of whether a person has been arrested or detained on suspicion of having committed an offence for which the maximum penalty is death, the AFP may provide ‘in situ training’ and advice to RPNGC (for example, at a crime scene) without requiring approval as the AFP officers do not carry out the pre-arrest activities themselves but rather provide training and guidance to RPNGC counterparts. In these situations, the AFP will ensure there is a written record of the assistance provided.

2) Arrest without warrant in exceptional circumstances

AFP Appointees only have advisor status in PNG, however there may be exceptional circumstances that arise where an AFP Appointee may consider taking action to assist the RPNGC. This is particularly the case when an alleged criminal act takes place in the presence of an AFP Appointee or there is a serious threat to the safety and security of other persons, including AFP Appointees. The AFP Mission Commander in PNG issues a Mission Commander’s Order to guide AFP Appointee action in these circumstances.

3) Provision of evidence/assistance – Post-arrest

Where a person has been arrested, detained, charged or convicted of an offence for which the maximum penalty is death, the AFP may provide evidence/assistance if approval is sought only in the following circumstances:

a) Possible that the death penalty may be the sentence

The request will be forwarded to the Attorney-General for decision where the AFP PNG Mission Commander determines there is a possibility that the evidence/assistance to be provided could contribute to the death penalty being sought or imposed.

b) *The death penalty is unlikely to be the sentence*

The AFP PNG Mission Commander may approve the provision of assistance where the Mission Commander determines there is no possibility that the evidence/assistance to be provided could contribute to the death penalty being sought or imposed.

c) *Provision of exculpatory evidence*

The AFP PNG Mission Commander may approve the provision of assistance if the Mission Commander is satisfied that the evidence/assistance requested would be exculpatory and would help an offender avoid the death penalty.

The Mission Commander in deciding whether or not to approve assistance in potential death penalty situations for the three categories above, will consider the following factors:

- the purpose of providing the assistance and/or information to be released
- the possibility of the authorities in the foreign country using the assistance and/or information only for that purpose
- the reliability of the information to be released
- whether the assistance and/or information is exculpatory in nature
- nationalities of the persons 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 assistance and/or information
- the degree of risk to the person in providing the assistance and/or information, including the possibility the death penalty will be imposed, and
- Australia's interest in promoting and securing cooperation from overseas agencies in combating crime.