

# 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) (AFP Act 1979).

## 2. Acronyms

<b>AFP</b>	Australian Federal Police
<b>SIO</b>	Superintendent International Operations
<b>DPR</b>	Death Penalty Request
<b>DPRA</b>	Death Penalty Risk Assessment
<b>DPRC</b>	Death Penalty Risk Category
<b>IO - OET</b>	International Operations - Operational Engagement Team
<b>CMDIE</b>	Commander International Engagement
<b>ACI</b>	Assistant Commissioner International Command
<b>PNG</b>	Papua New Guinea
<b>PROMIS</b>	Police Real-time Online Management Information System
<b>SO</b>	Senior Officer

## 3. Definitions

**AFP appointee** – As defined in s. 4 of the [AFP Act 1979](#).

**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. 8.3 of the 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 the Commander International Engagement following the assessment of the request and consideration of the relevant factors as detailed in s. 8.2 of the guideline, and the risk categories as detailed in s. 8.3 of the guideline.

**Death Penalty Situation** – means a situation in which AFP members are considering sharing information or other 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.

#### 4. Guideline authority

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

#### 5. 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 has been developed in consultation with the Attorney-General's Department.

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.

#### 6. 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 1979](#) (Cth) and the [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 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 the Attorney-General's Department.

#### 7. 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 Committees recommendations.

## 8. Provision of assistance and cooperation

### 8.1 Assistance and cooperation before detention, arrest, charge or conviction

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 will complete and submit a Death Penalty Request for consideration by Commander International Engagement.

### 8.2 Relevant factors

Commander International Engagement will 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 in providing the information, including the likelihood the death penalty will be imposed
10. the level of risk to any potential victim/s in providing or not providing the assistance
11. the level of risk to other persons in 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.

### 8.3 Death Penalty Request Risk Category and Authorised Approving Delegate

The Authorised Approving Delegate, as determined by the Death Penalty Request Risk Category, will consider the Death Penalty Request against relevant factors as per s.8.2 and 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 will generally

be 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.

Commander International Engagement is the Authorised Approving Delegate for Death Penalty Requests assessed as Low Risk.

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.

Commander International Engagement, in consultation with the relevant Functional Commander, is the Authorised Approving Delegate for Death Penalty Requests assessed as Medium Risk.

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 will release information that is 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.

Assistant Commissioner International Command, in consultation with Commander International Engagement and the relevant Functional Commander, is the Authorised Approving Delegate for Death Penalty Requests assessed as High Risk.

Where appropriate, AFP Legal will be co-opted for consideration of matters categorised as high risk.

#### **8.4 Assistance after detention, arrest, charge or conviction**

Ministerial approval is required in 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.

#### **8.5 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. AFP appointees will follow the procedures in [Attachment A](#) (AFP

Hub) to that framework which applies specifically to AFP appointees in PNG undertaking 'Frontline Advisory' roles.

## 9. DPR process

### 9.1 Procedures before detention, arrest, charge or conviction.

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.

<b>Step 1</b>	Following consultation with the relevant AFP International Post, the case officer seeking assistance approval is to complete the ' <a href="#">Assistance in Potential Death Penalty Situations – Approval Request</a> ' (DPR) in consultation with IO-OET. This also includes an attachment detailing the assistance to be provided.
<b>Step 2</b>	Functional Superintendent or SO (for requests originating from Post) endorses the DPR through the relevant Functional Commander and submits to IO-OET (via email).
<b>Step 3</b>	IO-OET reviews the DPR, liaises with the relevant functional area and submits to SIO.
<b>Step 4</b>	SIO reviews DPR and submits to CMDIE for review and assessment.
<b>Step 5</b>	CMDIE completes DPRA and determines the relevant DPRC. Dependent on the DPRC the request is considered by the relevant Delegate/s, as per s. 8.3, for approval.
<b>Step 6</b>	Documentation for the approved DPR is returned to the relevant functional area for actioning in conjunction with the relevant AFP Post.  Non-approved DPRs will be returned to the relevant functional area.

### 9.2 Procedures following 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, the following steps must be followed, before the provision of assistance.

<b>Step 1</b>	The case officer seeking assistance approval prepares a Ministerial Brief with a covering Executive Brief.  The Ministerial Brief should cover the same relevant factors that are required to be considered by the relevant AFP Delegate/s.  Once drafted, the Ministerial Brief and Executive Brief are submitted to CMDIE.
<b>Step 2 (a)</b>	CMDIE consults with the relevant DFAT Regional Division Head, the AGD Treaties Division and Department of Home Affairs (DHA)
<b>Step 2 (b)</b>	Concurrent to Step 2 (a) the relevant SO consults with the relevant DFAT Head of Mission.

<b>Step 3</b>	Following consultation and input from DFAT, AGD and DHA, CMDIE submits the Ministerial Brief and covering Executive Brief to ACI for the attention of Deputy Commissioner Investigations.
<b>Step 4</b>	If the Ministerial Brief and covering Executive Brief are approved, the DPR will be progressed to the Minister via the AFP Ministerial Team.

### 9.3 Procedures for AFP appointees in Papua New Guinea (PNG)

All AFP appointees in PNG undertaking 'Frontline Advisory' roles 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.

## 10. 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.

## 11. Further advice

Enquiries in relation to the content of this guideline should be referred to International Command, Superintendent International Operations.

## 12. References

### Legislation

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

### Other sources

- [Assistance in Potential Death Penalty Situations](#) (Investigator's Toolkit)
- [Australian Government PNG Death Penalty Framework - Attachment A](#)
- [Ministerial Direction](#) (AFP Hub).

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