



# **Mutual Assistance in Criminal Matters Regulations 1988**

**Statutory Rules 1988 No. 126 as amended**

made under the

*Mutual Assistance in Criminal Matters Act 1987*

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taking into account amendments up to SR 2001 No. 269

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**1 Name of Regulations** [see Note 1]

These Regulations are the *Mutual Assistance in Criminal Matters Regulations 1988*.

**2 Interpretation**

- (1) In these Regulations, unless the contrary intention appears, *the Act* means the *Mutual Assistance in Criminal Matters Act 1987*.
- (2) In these regulations, a reference to a form by number is a reference to the form in the Schedule which bears that number.

**2A Application of *Criminal Code***

Chapter 2 of the *Criminal Code* applies to offences against these Regulations.

*Note* Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**3 Power of Magistrate to send for witnesses and documents**

- (1) A Magistrate acting under the Act may issue a summons in accordance with Form 1:
  - (a) requiring a named person to attend as a witness before the Magistrate to do any of the following:
    - (i) to give evidence as required under the summons;
    - (ii) to answer questions as required under the summons;
    - (iii) to produce documents and other articles in the person's custody or control as required under the summons; or
  - (b) requiring a named person who is only to produce documents, other articles, or both:
    - (i) to attend before the Magistrate; and
    - (ii) produce the documents (if any) in the person's custody or control; and

- (iii) produce the other articles (if any) in the person's custody or control.
- (2) Service on a person of a summons under this regulation may be effected in any State or Territory and shall be effected by delivering a copy of the summons to the person personally or to a duly authorised person (authorised by the person to be served) and, at the same time, showing the summons to the person.
- (3) If service on a person cannot be effected under subregulation (2) for any reason, the Magistrate may, on application, order that, instead of service, the steps specified in the order are to be taken to bring the document to the notice of a person named in the summons.
- (4) If a Magistrate makes an order under subregulation (3), the Magistrate may order that the document be taken to have been served on the happening of a specified event, or on the expiry of any specified time.

**4 Duty of person to continue in attendance**

A person summoned under regulation 3 to attend before a Magistrate must attend at the place and time, and on the date, specified in the summons and then from day to day unless excused or released from attending by a Magistrate.

**5 Arrest of person failing to attend**

- (1) If a person summoned under regulation 3 to attend before a Magistrate fails to attend as required by regulation 4, the Magistrate may, on being satisfied that the summons has been duly served and that a reasonable sum for the expenses of attendance has been paid or tendered to that person, issue a warrant for the apprehension of that person in accordance with Form 2.
- (2) A person named in a warrant issued under subregulation (1) may, under the warrant, be apprehended, brought before a Magistrate and detained in custody until released by order of the Magistrate.

- (3) A warrant issued under subregulation (1) may be executed in any State or Territory.
- (4) The apprehension of a person under this regulation does not relieve the person from any liability incurred by the person because of his or her failure to attend before the Magistrate.

**6 Fees for person attending**

- (1) A person who attends before a Magistrate in a State or Territory in accordance with a summons under regulation 3 is entitled to be paid witness fees and travelling allowances as if attending before a court of summary jurisdiction in that State or Territory or, in special circumstances, such fees and allowances as the Magistrate directs.
- (2) Fees and allowances are payable to a person in accordance with subregulation (1) subject to the deduction of any amount previously paid to the person for expenses of attendance.
- (3) Fees and allowances are payable by the person at whose request the person named in the summons was summoned.

**7 Power to examine on oath or affirmation**

- (1) A Magistrate performing functions under the Act may administer an oath or affirmation to any person appearing as a witness before the Magistrate and may examine the witness on oath or affirmation.
- (2) A person may, for the purposes of any proceeding in relation to the Act, make an affirmation instead of taking an oath.
- (3) Subject to any rules of court applicable to a proceeding in relation to the Act, the forms of oaths and affirmations shall be the same, as nearly as practicable, as those used in the Supreme Court of the State or Territory in which the oath or affirmation is administered.
- (4) An affirmation made by a person pursuant to this regulation has the same effect for all purposes as if the person had taken an oath.

## **8 Offences by persons**

- (1) A person who is summoned to attend before a Magistrate must not:
- (a) without reasonable excuse, fail to attend as required by the summons, after payment or tender of a reasonable sum for expenses of attendance;
  - (b) refuse to be sworn or to make an affirmation as a witness or, without reasonable excuse, to answer any question when required to do so by the Magistrate; or
  - (c) without reasonable excuse, refuse or fail to produce any document or other article that the person was required to produce by the summons.

Penalty: 5 penalty units.

- (2) An offence against paragraph (1) (a) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

## **9 Offences in relation to Magistrates**

A person shall not, when a Magistrate is performing functions under the Act:

- (a) intentionally insult or disturb the Magistrate;
- (b) interrupt the proceedings before the Magistrate;
- (c) use insulting language to the Magistrate; or
- (d) by writing or speech use words calculated:
  - (i) to influence improperly the Magistrate, a witness or any other person appearing before the Magistrate; or
  - (ii) to bring the Magistrate into disrepute.

Penalty: 10 penalty units.

## **10 Protection in relation to functions under the Act**

- (1) A Magistrate who performs functions under the Act in a State or Territory has the same protection and immunity as a judge of the Supreme Court of that State or Territory has in the performance of his or her duty as a judge of the Supreme Court.

- (2) A barrister or solicitor appearing before a Magistrate in a State or Territory in connection with the performance by the Magistrate of functions under the Act has the same protection and immunity as a barrister or solicitor, as the case may be, has in appearing for a party in proceedings in the Supreme Court of that State or Territory.
- (3) Where a person who is not represented by a barrister or solicitor appears before a Magistrate in a State or Territory in connection with the performance by the Magistrate of functions under the Act, the person has the same protection and immunity as a party to proceedings in the Supreme Court of the State or Territory has in appearing before that Court when not so represented.
- (4) A person summoned as a witness to attend or appearing before a Magistrate who performs functions under the Act in a State or Territory has the same protection as a witness in proceedings in the Supreme Court of that State or Territory.

## **11 Forfeiture of recognizance**

- (1) Where a Magistrate in, or a judge of the Supreme Court of, a State or Territory is satisfied that a person admitted to bail in that State or Territory in relation to a proceeding under the Act has failed to comply with the conditions of the recognizance upon which the person was admitted to bail, the Magistrate or judge may, by order, declare the recognizance to be forfeited.
- (2) Where a Magistrate or judge declares a recognizance to be forfeited, payment of any sum due under the recognizance by a person residing in the State or Territory in which the recognizance was so declared to be forfeited may be enforced as a fine imposed by a court having jurisdiction in that State or Territory.
- (3) An amount recovered pursuant to this section shall be transmitted to the Attorney-General of the Commonwealth.

## **12 Authorisation in relation to search warrant**

An authorisation given by the Attorney-General to a police officer under subsection 15 (1) of the Act to apply to a

Magistrate for a search warrant may be in accordance with Form 3.

**15 Authorisation to apply for search warrant under Proceeds of Crime Act**

An authorisation given by the Attorney-General to a police officer under subsection 35 (1) of the Act to apply to a Magistrate for a search warrant under the Proceeds of Crime Act in relation to tainted property shall be in accordance with Form 7.

**16 Authorisation to apply for production order or search warrant under the Proceeds of Crime Act in relation to document**

An authorisation given by the Attorney-General to a police officer under subsection 37 (1) of the Act to apply to a judge for a production order or search warrant under the Proceeds of Crime Act in respect of a document shall be in accordance with Form 8.

**17 Authorisation to apply for monitoring order under Proceeds of Crime Act**

An authorisation given by the Attorney-General to a police officer under subsection 37 (3) of the Act to apply to a judge for a monitoring order under the Proceeds of Crime Act shall be in accordance with Form 9.



## Schedule

### Form 1 Summons (regulation 3)

Commonwealth of Australia

#### SUMMONS

*Mutual Assistance in Criminal Matters Act 1987*

Summons In the Matter of proceedings relating to  
under the *Mutual Assistance in Criminal Matters Act 1987*

To: *(name and address)*.

YOU ARE HEREBY summoned pursuant to regulation 3 of the Mutual Assistance in Criminal Matters Regulations to appear at *(place, date and time)* and to attend from day to day unless you are excused or released from so attending to \* give evidence/ \* answer questions/ \* and/ \* to produce the following/ \* documents/ \* and/ \* other/ \* articles:

Dated 19 .

*(Signature)*

*(Description)*

\* Omit if inapplicable.

*Note* If a person who has been served with a summons under the Mutual Assistance in Criminal Matters Regulations and has been paid or tendered a reasonable sum for his or her expenses then fails to attend as required by the summons, the person:

- (a) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$500; and
- (b) is liable without further notice to be apprehended and brought before a Magistrate.

**Form 2 Warrant of Apprehension**  
(regulation 5)

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987*

**WARRANT OF APPREHENSION**

To all police officers within the meaning of the *Mutual Assistance in Criminal Matters Act 1987*.

**WHEREAS:**

- (a) (*name and address of person*) was summoned to attend before me, a Magistrate, being a person performing functions pursuant to an arrangement in force under section 39 of the *Mutual Assistance in Criminal Matters Act 1987*, on 19 , and then from day to day unless excused or released from so attending;
- (b) (*name of person*) has failed to attend on 19 as required by the summons; and
- (c) I am satisfied that the summons was duly served on (*name of person*) and that a reasonable sum for the expenses of attendance was \* paid/ \* tendered/ to (*name of person*);

NOW THEREFORE I, pursuant to regulation 5 of the Mutual Assistance in Criminal Matters Regulations, authorise and request you to find (*name of person*) in any State or Territory of the Commonwealth and to bring him or her before me to \* give evidence/\* answer questions/\* and/\* produce/\* documents/\* and/\* other/\* articles/ as required by the summons, and to detain him or her in custody for that purpose.

(Date)

(Signature)  
(Description)

\* Omit if inapplicable.

**Form 3 Authorisation to apply for search warrant**  
(regulation 12)

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987*

**AUTHORISATION TO APPLY FOR SEARCH WARRANT**

To \_\_\_\_\_ of \_\_\_\_\_, a police officer within the meaning of the *Mutual Assistance in Criminal Matters Act 1987*.

**WHEREAS:**

- (a) \*a proceeding/ \*an investigation relating to a criminal matter involving the serious offence of (*description of offence*) has commenced in \_\_\_\_\_ ‡, a foreign country;
- (b) there are reasonable grounds to believe that evidential material, being \_\_\_\_\_ †, relevant to the \*proceeding/ \*investigation/ is located in Australia; and
- (c) \_\_\_\_\_ ‡ has requested me to arrange for the issue of a search warrant in relation to that \_\_\_\_\_ ‡;

NOW THEREFORE I, \_\_\_\_\_, Attorney-General of the Commonwealth of Australia, pursuant to subsection 15 (1) of that Act, hereby authorise you and any police officer acting on your behalf in this \*proceeding/\*investigation to apply to a Magistrate in (*name of State or Territory*), being the \*State/ \*Territory/ in which that \_\_\_\_\_ † is believed to be located, for the search warrant requested by \_\_\_\_\_ ‡.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

Attorney-General

\* Omit if inapplicable.

‡ Insert name of foreign country.

† Insert name or brief description of evidential material to which request of foreign country relates.

**Form 7 Authorisation to apply for search warrant under Proceeds of Crime Act 1987**

(regulation 15)

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987*

AUTHORISATION TO APPLY FOR SEARCH WARRANT UNDER PROCEEDS OF CRIME ACT 1987

To, \_\_\_\_\_ of \_\_\_\_\_, a police officer within the meaning of the *Mutual Assistance in Criminal Matters Act 1987*.

WHEREAS:

- (a) a \*criminal proceeding/ \*criminal investigation/ has commenced in \_\_\_\_\_ †, a foreign country, in respect of a serious offence, being (*insert description of offence*);
- (b) there are reasonable grounds for believing that tainted property in relation to the offence is located in Australia; and
- (c) \_\_\_\_\_ † has requested me to obtain the issue of a search warrant in relation to the tainted property;

NOW THEREFORE I, \_\_\_\_\_, Attorney-General of the Commonwealth of Australia, hereby authorise you (*insert name of police officer*), pursuant to subsection 35 (1) of the *Mutual Assistance in Criminal Matters Act 1987*, to apply to a Magistrate of (*insert name of State or Territory*), being a State or Territory within the meaning of the *Proceeds of Crime Act 1987* in which \*some/ \*all of the tainted property is believed to be located, for a search warrant under the *Proceeds of Crime Act 1987* in relation to that tainted property.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

Attorney-General

\* Omit if inapplicable.

† Insert name of foreign country.

**Form 8 Authorisation to apply for \*production order/\*search warrant under Proceeds of Crime Act 1987 in respect of document**

(regulation 16)

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987*

AUTHORISATION TO APPLY FOR \*PRODUCTION ORDER/\*  
SEARCH WARRANT UNDER PROCEEDS OF CRIME ACT 1987 IN  
RESPECT OF DOCUMENT

To, \_\_\_\_\_ of \_\_\_\_\_, a police officer within the  
meaning of the *Mutual Assistance in Criminal Matters Act 1987*.

WHEREAS:

- (a) a \*criminal proceeding/ \*criminal investigation/ has commenced  
in \_\_\_\_\_ †, a foreign country, in respect of a serious  
offence, being (*insert description of offence*);
- (b) a property-tracking document in relation to the offence is  
reasonably believed to be located in Australia; and
- (c) \_\_\_\_\_ † has requested me to obtain the issue  
of \*an order requiring that the document be produced or made  
available for inspection in accordance with Australian law/ \*a  
search warrant in respect of the offence;

NOW THEREFORE I, \_\_\_\_\_, Attorney-General of the  
Commonwealth of Australia, hereby authorise you (*insert name of police  
officer*), pursuant to subsection 37 (1) of the *Mutual Assistance in  
Criminal Matters Act 1987*, to apply to a judge of the Supreme Court of  
(*insert name of State or Territory*), being the \* State/ \* Territory/ in  
which \* the document is/ \* some of/ \* all of / \* the documents are/  
believed to be located, \* for a production order under the *Proceeds of  
Crime Act 1987* in respect of the offence for the purpose of obtaining  
possession of the property-tracking document/ \* a search warrant under  
the *Proceeds of Crime Act 1987* in relation to the property-tracking  
document.

Dated \_\_\_\_\_ 19 \_\_\_\_ .

Attorney-General

\* Omit if inapplicable.

† Insert name of foreign country.

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**Form 9 Authorisation to apply for monitoring order under Proceeds of Crime Act 1987**

(regulation 17)

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987***AUTHORISATION TO APPLY FOR MONITORING ORDER UNDER PROCEEDS OF CRIME ACT 1987**

To, \_\_\_\_\_ of \_\_\_\_\_, a police officer within the meaning of the *Mutual Assistance in Criminal Matters Act 1987*.

**WHEREAS:**

- (a) a \*criminal proceeding/\* criminal investigation/ has commenced in †, a foreign country, in respect of a serious offence that is:
- \*a serious narcotics offence, being ‡;
  - \*a foreign organised fraud offence, being ‡;
  - \*a money laundering offence in respect of proceeds of a serious narcotics offence or a foreign organised fraud offence, being ‡;
  - \*an ancillary offence in relation to an offence of the kind abovementioned, being ‡;
- (b) information about transactions conducted through an account with a financial institution in Australia is reasonably believed to be relevant to the \*proceeding/\* investigation; and
- (c) † has requested me to obtain the issue of an order directing the financial institution to give information about transactions conducted through the account;

NOW THEREFORE I, \_\_\_\_\_, Attorney-General of the Commonwealth of Australia, pursuant to subsection 37 (2) of the *Mutual Assistance in Criminal Matters Act 1987*, hereby authorise you, (*insert name of police officer*), to apply to a judge of the Supreme Court

of (*insert name of State or Territory*) for a monitoring order under the *Proceeds of Crime Act 1987* in respect of the offence for the purposes of obtaining the information requested by †.

Dated 19 .

Attorney-General

\* *Omit if inapplicable.*

† *Insert name of foreign country.*

‡ *Insert description of offence.*

## Form 10 Arrangement for Service of Process

(subregulation 18 (1))

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987*

### ARRANGEMENT FOR SERVICE OF PROCESS

To of ‡.

#### WHEREAS:

- (a) proceedings relating to a criminal matter, being (*insert description of matter*) have been instituted in †, a foreign country;
- (b) † has requested me to arrange for the service in Australia of a process, being (*insert description of process*), relating to that criminal matter on (*insert name of person*) at (*insert address for service*):

NOW THEREFORE I, , Attorney-General of the Commonwealth of Australia, pursuant to subsection 38 (1) of the *Mutual Assistance in Criminal Matters Act 1987*, hereby authorise and request you to undertake the service of that process on the abovementioned (*insert name of person*) at (*insert address for service*).

Dated 19 .

Attorney-General

‡ *Insert name and address of person or agency that is to undertake service.*

† *Insert name of foreign country.*

## Form 11 Affidavit of service

(subregulation 18 (2))

Commonwealth of Australia

*Mutual Assistance in Criminal Matters Act 1987*

### AFFIDAVIT OF SERVICE

I, *(name)*, *(occupation or description)*, of *(usual address)*  
\*make oath and say/ \*affirm/ \*declare/ as follows:

1. I did on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ serve *(name and description of person served)* with the following document/\*s, namely:

*(identify and describe document/\*s)*

2. Service was effected:

- \* by delivering the document/\*s to *(name)* personally at *(full address)*;
- \* by leaving the document/\*s with *(name and description)* at *(address)*;
- \* by posting the document/\*s by \_\_\_\_\_ † post to *(name)* at *(address)*;

3. *(To be completed in the case of personal service)*. I identified *(name)* by *(set out means of identification)*.

4. A true copy of the document/\*s served is attached hereto and marked "A".

Signed/\* and sworn/ at *(city or town)* in *(country)* on \_\_\_\_\_ 19 \_\_\_\_\_.

*Signature of deponent*

Before me:

*(name and title or description of person taking affidavit)*

*Signature*

\* Omit if inapplicable.

† State whether ordinary, registered or other special post.



**Table of Statutory Rules**

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**Notes to the *Mutual Assistance in Criminal Matters Regulations 1988*****Note 1**

The *Mutual Assistance in Criminal Matters Regulations 1988* (in force under the *Mutual Assistance in Criminal Matters Act 1987*) as shown in this compilation comprise Statutory Rules 1988 No. 126 amended as indicated in the Tables below.

**Table of Statutory Rules**

| <b>Year and number</b> | <b>Date of notification in <i>Gazette</i></b> | <b>Date of commencement</b>                   | <b>Application, saving or transitional provisions</b> |
|------------------------|---|---|---|
| 1988 No. 126           | 24 Jun 1988                                   | 1 July 1988                                   |   |
| 1997 No. 3             | 12 Feb 1997                                   | 1 Mar 1997 (see <i>Gazette</i> 1997, No. S50) | —   |
| 2001 No. 269           | 5 Oct 2001                                    | 5 Oct 2001                                    | —   |

**Table of Amendments****Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| <b>Provision affected</b> | <b>How affected</b>             |
|---------------------------|---------------------------------|
| R. 1.....                 | rs. 2001 No. 269                |
| R. 2A.....                | ad. 2001 No. 269                |
| Rr. 3, 4.....             | am. 1997 No. 3                  |
| R. 6.....                 | am. 1997 No. 3                  |
| Rr. 8, 9.....             | am. 1997 No. 3; 2001 No. 269    |
| R. 10.....                | am. 1997 No. 3                  |
| Rr. 13, 14.....           | rep. 1997 No. 3                 |
| R. 18.....                | rep. 1997 No. 3                 |
| Schedule .....            | am. 1997 No. 3                  |
| Form 1.....               | 1988 No. 126<br>am. 1997 No. 3  |
| Form 2.....               | 1988 No. 126<br>am. 1997 No. 3  |
| Form 3.....               | 1988 No. 126<br>am. 1997 No. 3  |
| Form 4.....               | 1988 No. 126<br>rep. 1997 No. 3 |
| Form 5.....               | 1988 No. 126<br>rep. 1997 No. 3 |
| Form 6.....               | 1988 No. 126<br>rep. 1997 No. 3 |
| Form 7.....               | 1988 No. 126<br>am. 1997 No. 3  |
| Form 8.....               | 1988 No. 126<br>am. 1997 No. 3  |
| Form 9.....               | 1988 No. 126<br>am. 1997 No. 3  |
| Form 10.....              | 1988 No. 126                    |
| Form 11.....              | 1988 No. 126                    |