



Mutual Assistance in Criminal Matters Regulations 1988

Statutory Rules No. 126, 1988 as amended

made under the

Mutual Assistance in Criminal Matters Act 1987

Compilation start date: 12 April 2013

Includes amendments up to: SLI No. 51, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

The compiled instrument

This is a compilation of the *Mutual Assistance in Criminal Matters Regulations 1988* as amended and in force on 12 April 2013. It includes any amendment affecting the compiled instrument to that date.

This compilation was prepared on 20 May 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled instrument is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled instrument is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled instrument has expired or otherwise ceased to have effect in accordance with a provision of the instrument, details of the provision are set out in the endnotes.

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1 Name of Regulations

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 or eligible Federal Circuit Court Judge to send for witnesses and documents

- (1) A Magistrate or an eligible Federal Circuit Court Judge 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 or Judge 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 or Judge; and
 - (ii) produce the documents (if any) in the person's custody or control; and

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- (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 or eligible Federal Circuit Court Judge 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 or an eligible Federal Circuit Court Judge makes an order under subregulation (3), the Magistrate or Judge 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 or an eligible Federal Circuit Court Judge 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 or Judge.

5 Arrest of person failing to attend

- (1) If a person summoned under regulation 3 to attend before a Magistrate or an eligible Federal Circuit Court Judge fails to attend as required by regulation 4, the Magistrate or Judge 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 or

an eligible Federal Circuit Court Judge and detained in custody until released by order of the Magistrate or Judge.

- (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 or eligible Federal Circuit Court Judge.

6 Fees for person attending

- (1) A person who attends before a Magistrate or an eligible Federal Circuit Court Judge 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 or Judge 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 or an eligible Federal Circuit Court Judge performing functions under the Act may administer an oath or affirmation to any person appearing as a witness before the Magistrate or Judge 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 or an eligible Federal Circuit Court Judge 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 Judge; 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 or eligible Federal Circuit Court Judges

A person shall not, when a Magistrate or an eligible Federal Circuit Court Judge is performing functions under the Act:

- (a) intentionally insult or disturb the Magistrate or Judge;
- (b) interrupt the proceedings before the Magistrate or Judge;
- (c) use insulting language to the Magistrate or Judge; or
- (d) by writing or speech use words calculated:
 - (i) to influence improperly the Magistrate or Judge, a witness or any other person appearing before the Magistrate or Judge; or
 - (ii) to bring the Magistrate or Judge 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 or an eligible Federal Circuit Court Judge in a State or Territory in connection with the performance by the Magistrate or Judge 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 or an eligible Federal Circuit Court Judge in a State or Territory in connection with the performance by the Magistrate or Judge 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 or an eligible Federal Circuit Court Judge 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) If any of the following is satisfied that a person admitted to bail in a State or Territory in relation to a proceeding under the Act has failed to comply with the conditions of the recognisance upon which the person was admitted to bail:
 - (a) a Magistrate in the State or Territory;
 - (b) an eligible Federal Circuit Court Judge;
 - (c) a Judge of the Supreme Court in the State or Territory;the Magistrate, the eligible Federal Circuit Court Judge or the Judge of the Supreme Court may, by order, declare the recognisance to be forfeited.

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- (2) If the recognisance has been declared to be forfeited, a court having jurisdiction in the State or Territory in which the recognisance was declared to be forfeited may enforce payment of any amount due under the recognisance by a person residing in that State or Territory.
- (3) An amount recovered pursuant to this section shall be transmitted to the Attorney-General of the Commonwealth.

Schedule

Form 1—Summons

(regulation 3)

Commonwealth of Australia

SUMMONS

Mutual Assistance in Criminal Matters Act 1987

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

(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 or an eligible Federal Circuit Court Judge.

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 under an arrangement in force under section 39 of the Act/*being an eligible Federal Circuit Court Judge/ on *(date)*, and then from day to day unless excused or released from so attending;
- (b) *(name of person)* has failed to attend on *(date)* 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.*

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Mutual Assistance in Criminal Matters Regulations 1988*.

Number and year	Gazettal or FRLI registration date	Commencement date	Application, saving and transitional provisions
1988 No. 126	24 Jun 1988	1 July 1988	
1997 No. 3	12 Feb 1997	1 Mar 1997 (<i>see Gazette</i> 1997, No. S50)	—
2001 No. 269	5 Oct 2001	5 Oct 2001	—
2002 No. 258	6 Nov 2002	1 Jan 2003	—
2004 No. 374	23 Dec 2004	23 Dec 2004	—
2012 No. 210	3 Sept 2012 (<i>see</i> F2012L01825)	Schedule 2: 20 Sept 2012 (<i>see</i> s. 2)	—
51, 2013	11 Apr 2013 (<i>see</i> F2013L00649)	Schedule 1 (items 72–103): (a)	—

- (a) Subsection 2(1) (item 2) of the *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)* provides as follows:
- 2 Each provision of this regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedule 1	Immediately after the commencement of Schedules 1 and 2 to the <i>Federal Circuit Court of Australia Legislation Amendment Act 2012</i> .	12 April 2013

Endnotes

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Mutual Assistance in Criminal Matters Regulations 1988*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
r. 1	rs. 2001 No. 269
r. 2A	ad. 2001 No. 269
Heading to r. 3	am. No. 51, 2013
r. 3	am. 1997 No. 3; No. 51, 2013
r. 4	am. 1997 No. 3; No. 51, 2013
r. 5	am. No. 51, 2013
r. 6	am. 1997 No. 3; No. 51, 2013
r. 7	am. No. 51, 2013
r. 8	am. 1997 No. 3; 2001 No. 269; No. 51, 2013
Heading to r. 9	am. No. 51, 2013
r. 9	am. 1997 No. 3; 2001 No. 269; No. 51, 2013
r. 10	am. 1997 No. 3; No. 51, 2013
r. 11	am. No. 51, 2013
r. 12	rep. 2012 No. 210
r. 13	rep. 1997 No. 3
r. 14	rep. 1997 No. 3
r. 15	rep. 2012 No. 210
r. 16	rep. 2012 No. 210
r. 17	rep. 2012 No. 210
r. 18	rep. 1997 No. 3 ad. 2002 No. 258 rep. 2012 No. 210
Schedule	
Schedule	am. 1997 No. 3
Form 1	1988 No. 126 am. 1997 No. 3; 2012 No. 210; No. 51, 2013

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Form 2	1988 No. 126 am. 1997 No. 3; 2012 No. 210; No. 51, 2013
Form 3	1988 No. 126 am. 1997 No. 3; 2004 No. 374 rep. 2012 No. 210
Form 4	1988 No. 126 rep. 1997 No. 3
Form 5	1988 No. 126 rep. 1997 No. 3
Form 6	1988 No. 126 rep. 1997 No. 3
Form 7	1988 No. 126 am. 1997 No. 3 rep. 2012 No. 210
Form 8	1988 No.126 am. 1997 No. 3 rep. 2012 No. 210
Form 9	1988 No.126 am. 1997 No. 3 rep. 2012 No. 210
Form 10	1988 No. 126 rep. 2012 No. 210
Form 11	1988 No. 126 rep. 2012 No. 210

Endnotes

Endnote 3—Uncommenced amendments [none]

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.