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Statutory Rules 1988 No. 1

126/

Mutual Assistance in Criminal Matters Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and pursuant to section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 17 June 1988.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

Citation

1. These Regulations may be cited as the Mutual Assistance in Criminal Matters Regulations.

Interpretation

2. (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.

Power of Magistrate to send for witnesses and documents

3. (1) A Magistrate who is performing functions under the Act may issue a summons in accordance with Form 1 requiring a person named in the summons to attend as a witness before the Magistrate in connection with the performance by the Magistrate of those functions and there to give

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evidence, answer questions and produce to the Magistrate such documents and other articles in the person's custody or control as are referred to in the summons.

(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 and, at the same time, showing the summons to the person.

Duty of witness to continue in attendance

4. A person summoned under regulation 3 to attend before a Magistrate as a witness shall 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.

Arrest of witness failing to attend

5. (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.

Witness fees

6. (1) A person who attends as a witness 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 witness in accordance with subregulation (1) subject to the deduction of any amount previously paid to the witness for expenses of attendance.

(3) Fees and allowances are payable by the person at whose request the witness was summoned.

Power to examine on oath or affirmation

7. (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.

Offences by witnesses

8. A person summoned to attend before a Magistrate as a witness shall 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: \$500.

Offences in relation to Magistrates

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

- (a) wilfully 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 or a witness before the Magistrate; or
 - (ii) to bring the Magistrate into disrepute.

Penalty: \$1,000.

Protection in relation to functions under the Act

10. (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 witness summoned 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.

Forfeiture of recognizance

11. (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.

Authorisation in relation to search warrant

12. 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.

Application for search warrant

13. (1) An application by a police officer to a Magistrate under subsection 15 (2) of the Act to search a person for a thing shall be in accordance with Form 4.

(2) An application by a police officer to a Magistrate under subsection 15 (4) of the Act to search land or premises for a thing shall be in accordance with Form 5.

Issue of search warrant—person or land or premises

14. A search warrant issued by a Magistrate pursuant to an application under subsection 15 (2) or (4) of the Act shall be in accordance with Form 6.

Authorisation to apply for search warrant under Proceeds of Crime Act

15. 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.

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

16. 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.

Authorisation to apply for monitoring order under Proceeds of Crime Act

17. 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.

Service of documents and proof of service

18. (1) Where the Attorney-General arranges, pursuant to subsection 38 (1) of the Act, for the service of a process and authorises a person to undertake that service, the authorisation shall be in accordance with Form 10.

(2) An affidavit of a person who has served a document in a foreign country for the purposes of the Act may be in accordance with Form 11.

SCHEDULE

FORM 1

Regulation 3

COMMONWEALTH OF AUSTRALIA

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 of witness)*.

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

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 witness)* 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*, as a witness on _____ 19__, and then from day to day unless excused or released from so attending;
- (b) the witness has failed to attend on _____ 19__ as required by the summons; and
- (c) I am satisfied that the summons was duly served on the witness and that a reasonable sum for the expenses of attendance was * paid/ * tendered/ to the witness;

NOW THEREFORE I, pursuant to regulation 5 of the Mutual Assistance in Criminal Matters Regulations, authorise and request you to find the witness in any State or Territory of the Commonwealth and to bring the witness before me to * give evidence/

SCHEDULE—continued

* answer questions/ * and/ * produce/ * documents/ * and/ * other/ * articles/ as required by the summons, and to detain the witness in custody for that purpose.

Dated 19

(Signature)
(Description)

* Omit if inapplicable.

FORM 3

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 a thing, being †, relevant to the * proceeding/* investigation/ is located in Australia; and
- (c) ‡ has requested me to arrange for the issue of a search warrant under section 15 of the Mutual Assistance in Criminal Matters Act 1987 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 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 thing to which request of foreign country relates.

FORM 4

Subregulation 13 (1)

COMMONWEALTH OF AUSTRALIA

Mutual Assistance in Criminal Matters Act 1987

APPLICATION FOR SEARCH WARRANT

(PERSON)

To (insert name and designation of Magistrate).

I, , of :

- (a) being a police officer within the meaning of the Mutual Assistance in Criminal Matters Act 1987 authorised in writing by the Attorney-General under subsection 15 (1) of that Act to apply to a Magistrate in (insert name of State or

SCHEDULE—continued

- Territory*) for the issue of a search warrant under section 15 of that Act in relation to a thing, being †; and
- (b) having reason to believe that † will, at *(insert date and time)* be * on/* in the clothing that is being worn by/* in the immediate control of/ *(insert name and address of person)*:
pursuant to subsection 15 (2) of the *Mutual Assistance in Criminal Matters Act 1987*:
- (c) by information on * oath/* affirmation set out the following grounds for that belief:
(state grounds for belief); and
- (d) apply to you, a Magistrate, for the issue of a warrant under section 15 of that Act to search *(insert name of person)* for that †.
- Dated 19 _____

Police officer

* Omit if inapplicable.

† Insert name or brief description of thing to which application relates.

FORM 5

Subregulation 13 (2)

COMMONWEALTH OF AUSTRALIA

Mutual Assistance in Criminal Matters Act 1987

APPLICATION FOR SEARCH WARRANT

(LAND OR PREMISES)

To *(insert name and designation of Magistrate)*.

- I, _____, of _____:
- (a) being a police officer within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* authorised in writing by the Attorney-General under subsection 15 (1) of that Act to apply to a Magistrate in *(insert name of State or Territory)* for the issue of a search warrant under section 15 of that Act in relation to a thing, being †; and
- (b) having reason to believe that † will, at *(insert date and time)* be * on land/* on premises/, being *(insert address and description of land or premises)*:
pursuant to subsection 15 (4) of the *Mutual Assistance in Criminal Matters Act 1987*:
- (c) by information on * oath/* affirmation/ set out the following grounds for that belief:
(state grounds for belief); and
- (d) apply to you, a Magistrate, for the issue of a warrant under section 15 of that Act to search * that land/* those premises/ for that †.
- Dated 19 _____

Police officer

* Omit if inapplicable.

† Insert name or brief description of thing to which application relates.

SCHEDULE—continued

FORM 6

Regulation 14

COMMONWEALTH OF AUSTRALIA

Mutual Assistance in Criminal Matters Act 1987

SEARCH WARRANT UNDER SECTION 15

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

WHEREAS:

- (a) a request has been made by _____ ‡, a foreign country, to the Attorney-General of the Commonwealth of Australia to arrange for the issue of a search warrant under section 15 of the *Mutual Assistance in Criminal Matters Act 1987* in relation to a thing, being _____ †:
- (i) which is relevant to a *proceeding/*an investigation/ that has commenced in that country relating to a criminal matter involving a serious offence, namely (*insert description of offence*); and
- (ii) which there are reasonable grounds to believe is located in Australia;
- (b) the Attorney-General has authorised you, in writing, to apply to a Magistrate in (*insert name of State or Territory*), being the * State/* Territory/ in which that _____ † is believed to be located, for the search warrant requested by _____ ‡;
- (c) you have laid before me, a Magistrate, an information on * oath/* affirmation/ setting out the grounds for the belief that the _____ † to which that request relates will at (*insert date and time*) be * on,/ *in the clothing that is worn by,/ * in the immediate control of/ (*insert name of person*); and

OR

- * upon land/* upon/ * in/ * premises/, being (*insert address and description of land or premises*); and
- (d) I am satisfied *, having regard to such further information as I have required, that there are reasonable grounds for issuing the warrant;

NOW THEREFORE I, under section 15 of the *Mutual Assistance in Criminal Matters Act 1987*, hereby authorise you, for the purpose of assisting in that * proceeding/* investigation/ in relation to the abovementioned offence of (*insert description of offence*), with such assistance, and by such force, as is necessary and reasonable:

- * between the hours of _____ and _____,
- * at any time of the day or night, _____ to search (*insert name of person*) for that _____ †;

OR

- * between the hours of _____ and _____,
- * at any time of the day or night, _____ to enter *upon that land/ * upon/*into/ * those premises/. to search * that land/* those premises/ for that _____ †;

and to seize any thing of the following kind:

(*insert description of kind of things authorised to be seized*) found in the course of the search that you believe, on reasonable grounds, to be relevant to the * proceeding/* investigation/ in _____ ‡ in relation to that abovementioned offence.

SCHEDULE—continued

THIS WARRANT ceases to have effect on *(insert date not being later than one month after the issue of the warrant)*.

Issued on 19 .

*(Signature and designation
of Magistrate issuing warrant)*

* Omit if inapplicable.

‡ Insert name of foreign country.

† Insert name or brief description of thing to which the application for the issue of the warrant relates.

FORM 7

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 under the *Proceeds of Crime Act 1987* 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 the search warrant requested by _____ †.

Dated 19 .

Attorney-General

* Omit if inapplicable.

† Insert name of foreign country.

SCHEDULE—continued

FORM 8

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
 - * a production order under the *Proceeds of Crime Act 1987* in respect of the document;
 - * a search warrant under the *Proceeds of Crime Act 1987* in respect of the document;

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 the order so requested by _____ †.

Dated _____ 19 ____ .

Attorney-General

* Omit if inapplicable.

† Insert name of foreign country.

FORM 9

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 money laundering offence in respect of proceeds of a serious narcotics offence, being _____ ‡;
 - * an ancillary offence in relation to an offence of the kind abovementioned, being _____ ‡;

SCHEDULE—continued

- (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 obtain the issue of a monitoring order under the *Proceeds of Crime Act 1987* directing the financial institution to give information to the Australian Federal Police 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 the order requested by †.

Dated

19 .

Attorney-General

* Omit if inapplicable.

† Insert name of foreign country.

‡ Insert description of offence.

FORM 10

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.

SCHEDULE—continued

FORM 11

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.

NOTE

1. Notified in the Commonwealth of Australia Gazette on _____ 1988.

24 June/