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Department.



Mutual Assistance in Criminal Matters (United States of America) Regulations 1999

Statutory Rules 1999 No.

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I, WILLIAM PATRICK DEANE, Governor-General of the
Commonwealth of Australia, acting with the advice of the
Federal Executive Council, make the following regulations under
the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 29 JUN 1999 1999.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

AMANDA VANSTONE
Minister for Justice and Customs



Mutual Assistance in Criminal Matters (United States of America) Regulations 1999

Statutory Rules 1999 No. 1

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made under the

Mutual Assistance in Criminal Matters Act 1987

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1 Name of regulations

These regulations are the *Mutual Assistance in Criminal Matters (United States of America) Regulations 1999*.

2 Commencement

These regulations commence on 1 October 1999.

3 Application of Act

The *Mutual Assistance in Criminal Matters Act 1987* applies to the United States of America subject to:

- (a) the Treaty between the Government of Australia and the Government of the United States of America on Mutual Assistance in Criminal Matters, done at Washington in the United States of America on 30 April 1997, a copy of the text of which is set out in Schedule 1; and
- (b) the exchange of notes comprising:
 - (i) the Note dated 30 April 1997, relating to the Treaty, from the Department of State, Washington to the Embassy of Australia, Washington, a copy of the text of which is set out in Schedule 2; and
 - (ii) the Note dated 30 April 1997, relating to the Treaty, from the Embassy of Australia, Washington to the Department of State, Washington, a copy of the text of which is set out in Schedule 2.

**Schedule 1 Treaty between the
Government of Australia and
the Government of the United
States of America on mutual
assistance in criminal matters**
(regulation 3)

TREATY BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE UNITED STATES OF
AMERICA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Government of Australia and The Government of the United States
of America,

Desiring to improve the effectiveness of the law enforcement authorities
of both countries in the investigation, prosecution and prevention of
offenses through cooperation and mutual assistance in criminal matters,

Have agreed as follows:

Article 1
Scope of Assistance

1. The Contracting Parties shall provide mutual assistance, in
accordance with the provisions of this Treaty, in connection with the
investigation, prosecution, and prevention of offenses, and in proceedings
related to criminal matters.
2. Assistance shall include:
 - (a) taking the testimony or statements of persons;
 - (b) providing documents, records, and other articles of
evidence;
 - (c) serving documents;
 - (d) locating or identifying persons;

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- (e) transferring persons in custody for testimony or other purposes;
 - (f) executing requests for searches and seizures and for restitution;
 - (g) immobilizing instrumentalities and proceeds of crime;
 - (h) assisting in proceedings related to forfeiture or confiscation; and
 - (i) any other form of assistance not prohibited by the laws of the Requested State.

3. This Treaty is intended solely for mutual assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2 Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For Australia, the Central Authority shall be the Attorney-General or a person designated by the Governor-General to be the Minister responsible for the administration of legislation relating to mutual assistance in criminal matters.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3 Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:
 - (a) the request relates to a political offense;

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- (b) the request relates to an offense under military law which would not be an offense under ordinary criminal law; or
 - (c) the execution of the request would prejudice the security or essential interests of the Requested State.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 Form and Contents of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in urgent situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise.

2. The request shall include the following:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the nature of, and the conduct giving rise to, the investigation, prosecution, or proceeding and the specific offenses to which the request relates;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) the purpose for which the evidence, information, or other assistance is sought.

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3. To the extent necessary and possible, a request shall also include:
- (a) the identity and location of any person from whom evidence is sought;
 - (b) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
 - (c) information on the identity and whereabouts of a person to be located;
 - (d) a precise description of the place or person to be searched and of the articles to be seized;
 - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (f) a list of essential questions to be asked of a witness;
 - (g) a description of any particular procedure to be followed in executing the request;
 - (h) information as to the fees, allowances, and expenses to which a person asked to appear in the Requesting State will be entitled;
 - (i) any court order relating to the assistance requested and a statement relating to the finality of that order; and
 - (j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.
4. If the Central Authority of the Requested State considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, it may request additional information.

Article 5
Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The courts of the Requested State are empowered to issue subpoenas, search warrants, or other orders necessary to execute the request.
2. The Central Authority of the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance.
3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. The method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.
4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.
5. The Requested State shall use its best efforts to keep confidential a request, its contents, and any action taken on the request if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the required confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.
6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress toward execution of the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 6
Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which fees, allowances, and expenses shall be paid by the Requesting State.

Article 7
Limitations on Use

1. If the Central Authority of the Requested State so requests, the Requesting State shall not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Requested State.
2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. In such cases, the Requesting State shall use its best efforts to comply.
3. Information or evidence which has been made public in the Requesting State consistent with the requirements of paragraph 1 or 2 may thereafter be used for any purpose.

Article 8
Taking Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall, if necessary, be compelled to appear and, subject to the law of that State on immunity, incapacity, or applicable privilege, testify or produce documents, records, or other articles of evidence.
2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.
3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person whose testimony or evidence is being taken either directly or through a local legal representative.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.
5. Documents, records, and articles of evidence produced in the Requested State pursuant to this Article or which are the subject of testimony taken under this Article may be authenticated by an attestation, including, in the case of business records, authentication in the manner indicated in Form A appended to this Treaty. Documents authenticated by Form A shall be admissible in evidence in the courts of the United States of America as proof of the truth of the matters set forth therein.
6. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed by either Central Authority.

Article 9
Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested State.
2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement or judicial authorities. The Requested State may, in its discretion, deny a request pursuant to this paragraph entirely or in part.
3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them through the use of Form B appended to this Treaty. Documents authenticated under this paragraph shall be admissible in evidence in the courts of the United States of America as proof of the truth of the matters set forth therein.
4. Official records produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed by either Central Authority.

Article 10
Assistance in the Requesting State

When the Requesting State requests the assistance of the Requested State in obtaining a person's consent to:

- (a) appear as a witness in the Requesting State; or
- (b) assist in investigations, prosecutions, or proceedings in the Requesting State;

the Requested State shall request the person to so consent. The Requesting State shall indicate the extent to which expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

Article 11
Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is needed for purposes of assistance under this Treaty shall be temporarily transferred from the Requested State to the Requesting State for that purpose if both the person and the Central Authority of the Requested State consent to the transfer.
2. A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty may be transferred to the Requested State if the person consents and if the Central Authorities of both States agree.
3. For purposes of this Article:
 - (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody;
 - (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
 - (c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred;
 - (d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State; and
 - (e) where the sending State advises the receiving State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 10.

Article 12
Safe Conduct

1. A person present in the Requesting State pursuant to Articles 10 or 11 shall not be subject to service of process, or be detained, prosecuted, or subjected to any restriction of personal liberty by reason of any acts or convictions which preceded that person's departure from the Requested State.
2. The safe conduct provided for by this Article shall cease twenty-five days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returned to it.

Article 13
Location or Identification of Persons

The Requested State shall use its best efforts to ascertain the location or identity of persons specified in the request.

Article 14
Service of Documents

1. The Requested State shall use its best efforts to effect service of any document which is transmitted to it for this purpose by the Requesting State.
2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.
3. The Requested State shall return a proof of service in the manner specified in the Request.

Article 15
Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any article to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.
2. Upon request, every official who has custody of a seized article shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the article, and the integrity of its condition. The certificates shall be admissible in evidence in courts of the United States of America as proof of the truth of the matters set forth therein.
3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect the articles to be transferred.

Article 16
Return of Evidence

Where requested by the Requested State, the Requesting State shall return the articles provided under this Treaty when they are no longer needed for the relevant investigation, prosecution, or proceeding.

Article 17
Assistance in Forfeiture Proceedings

1. Upon request of the Central Authority of the Requesting State, the Requested State, to the extent permitted by its law, shall endeavor to locate, trace, restrain, freeze, seize, forfeit, or confiscate the proceeds and instrumentalities of crime.

2. A Requested State in control of forfeited or confiscated proceeds or instrumentalities shall dispose of them according to its laws. To the extent permitted by its laws, either Party may transfer such property or the proceeds of its sale to the other Party upon mutually acceptable terms.

3. Where the Requesting State seeks assistance in the enforcement of a court order which restrains, forfeits, confiscates, or otherwise immobilizes the proceeds of crime, the request shall be accompanied by the original signed order, or a copy thereof, in either case bearing the official seal of the Central Authority of that State.

Article 18 Compatibility with Other Arrangements

Nothing in this Treaty shall prevent the Contracting Parties from providing assistance to each other pursuant to other treaties, arrangements, or the provisions of their national laws.

Article 19 Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually determined by them, to enable the most effective use to be made of this Treaty, either generally or in relation to a particular case.

Article 20 Entry Into Force and Termination

1. This Treaty shall enter into force on the date on which the Contracting Parties have exchanged written notification that they have complied with their respective requirements for the entry into force of this Treaty.

2. This Treaty shall apply to requests whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.

3. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force six months after the day on which notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Washington in duplicate, in English, this thirtieth day of April, 1997.

FOR THE GOVERNMENT OF
AUSTRALIA:

Andrew S. Peacock

FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA:

Timothy E. Wirth

FORM A

CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS

I, _____, attest on penalty of criminal
(Name)
punishment for false statement or false attestation that I am employed by

(Name of Business from which documents are sought)
and that my official title is _____.
(Official Title)

I further state that each of the records attached hereto is the original
or a duplicate of the original records in the custody of

(Name of Business from which documents are sought)

I further state that:

1. such records were made, at or near the time of the occurrence
of the matters set forth, by (or from information transmitted
by) a person with knowledge of those matters;
2. such records were kept in the course of a regularly conducted
business activity;
3. the business activity made such records as a regular practice;
and
4. if such records are not the original, such records are a duplicate
of the original.

_____, appearing before the undersigned
(Signature) magistrate or judicial official on
_____.
(Date)

Sworn to or affirmed before me, _____
(Name)

a _____, this ____ day of _____, 19____.
(Magistrate, Judicial Officer, etc.)

FORM B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC
DOCUMENTS

I, _____, attest that my position with the
(Name)

Government of _____ is _____ and
(Country) (Official Title)

that in that position I am authorized by the law of _____
(Country)

to attest that the documents attached and described below are true and
accurate copies of original official records which are recorded or filed in
_____, which is a
(Name of Office or Agency)

government office or agency of _____.
(Country)

Description of Documents:

(Signature)

(Title)

(Date)

FORM C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest that my position with the
(Name)
Government of _____ is _____.
(Country) (Official Title)

I received custody of the articles listed below from

_____ on _____ at _____.
(Name of Person) (Date) (Place)

I relinquished custody of the articles listed below to

_____ on _____ at _____.
(Name of Person) (Date) (Place)

in the same condition as when I received them (or, if different, as noted
below).

Description of Articles:

Changes in Condition while in my custody:

Official Seal

(Signature)

(Title)

(Place)

(Date)

Schedule 2 Exchange of notes

(regulation 3)

DEPARTMENT OF STATE
WASHINGTON

April 30, 1997

Excellency:

I have the honor to refer to the Treaty on Mutual Assistance in Criminal Matters signed today between the Government of the United States of America and the Government of Australia (the "Treaty"), and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this Note.

Article 3(1)(c) of the Treaty states that "The Central Authority of the Requested State may deny assistance if the execution of the request would prejudice the security or essential interests of the Requested State." The Parties agree that the term "essential interests" in this provision shall include the limitations on assistance set forth in Section 8 of Australia's Mutual Assistance in Criminal Matters Act 1987, including Sections 8(1A) and 8(1B), as amended by the Mutual Assistance in Criminal Matters Legislation Amendment Act 1996, so long as this law is in effect. I have the further honor to propose that this Note and Your Excellency's Note in reply confirming on behalf of your Government the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Assistance in Criminal Matters.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:
Timothy E. Wirth

His Excellency
The Honorable
Andrew S. Peacock,
Ambassador of Australia.

EMBASSY OF AUSTRALIA
WASHINGTON, D. C.

30 April, 1997

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honor to refer to the Treaty on Mutual Assistance in Criminal Matters signed today between the Government of the United States of America and the Government of Australia (the "Treaty"), and to propose that the Treaty be interpreted and applied in accordance with the provisions set forth in this Note.

Article 3 (1) (c) of the Treaty states that "The Central Authority of the Requested State may deny assistance if ... the execution of the request would prejudice the security or essential interests of the Requested State." The Parties agree that the term "essential interests" in this provision shall include the limitations on assistance set forth in Section 8 of Australia's Mutual Assistance in Criminal Matters Act 1987, including Sections 8 (1A) and 8 (1B), as amended by the Mutual Assistance in Criminal Matters Legislation Amendment Act 1996, so long as this law is in effect.

I have the further honor to propose that this Note and Your Excellency's Note in reply confirming on behalf of your Government the foregoing arrangements shall be regarded as constituting an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Assistance in Criminal Matters."

I have the honour to confirm on behalf of the Government of Australia that the above proposal is acceptable to the Government of Australia, and that Your Excellency's Note and this Note shall constitute an agreement between the two Governments, which shall enter into force simultaneously with the Treaty on Mutual Assistance in Criminal Matters.



Accept, Excellency, the renewed assurances of my highest consideration.

ANDREW PEACOCK

Ambassador

The Honorable
Madeleine K. Albright,
Secretary of State.

Note

1. Made by the Governor-General on  1999, and notified in
the *Commonwealth of Australia Gazette* on  1999.

29 June
6 July