

No. 27464

**AUSTRALIA
and
CANADA**

**Treaty on mutual assistance in criminal matters (with annex).
Signed at Ottawa on 19 June 1989**

Authentic texts: English and French.

Registered by Australia on 30 July 1990.

**AUSTRALIE
et
CANADA**

**Convention d'entraide juridique en matière pénale (avec
annexe). Signée à Ottawa le 19 juin 1989**

Textes authentiques : anglais et français.

Enregistrée par l'Australie le 30 juillet 1990.

TREATY¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in law enforcement matters,

HAVE AGREED AS FOLLOWS:

ARTICLE I - DEFINITIONS

For the purposes of this Treaty,

"central authority" means

- a) for Canada, the Minister of Justice or officials designated by that Minister;
- b) for Australia, the Attorney-General's Department, Canberra;

"competent authority" means any person or authority with responsibility for matters related to the investigation or prosecution of offences;

"offence" means

- a) in relation to Canada, any offence created by a law of Parliament that may be prosecuted upon indictment, or an offence created by a Legislature of a Province and specified in the Annex;
- b) in relation to Australia, any offence against the law of Australia or a part of Australia that falls or would fall within the jurisdiction of its courts and for which the penalty is a term of imprisonment of one year or more;

"request" means a request made under this Treaty.

¹ Came into force on 14 March 1990, i.e., one month after the date on which the Contracting Parties had notified each other (on 31 January and 14 February 1990) of the completion of their respective requirements, in accordance with article XX (1).

ARTICLE II - SCOPE OF APPLICATION

1. The Parties shall provide, in accordance with the provisions of this Treaty, mutual assistance in all matters relating to the investigation, prosecution and suppression of offences.

2. Assistance shall include:

- a) exchanging information and objects;
- b) locating or identifying persons, objects and sites;
- c) serving documents;
- d) taking of evidence and obtaining of statements of persons;
- e) executing requests for searches and seizures;
- f) providing documents and records;
- g) measures to locate, restrain and forfeit the proceeds of crime; and
- h) facilitating the availability of prisoners and other persons, with their consent, to give evidence or assist investigations.

3. The provisions of this Treaty shall not give rise to a right on the part of a private party to obtain or exclude any evidence or to impede the execution of a request.

ARTICLE III - OTHER ASSISTANCE

The Parties, including their competent authorities, may provide and continue to provide assistance pursuant to other agreements, arrangements or practices.

ARTICLE IV - REQUESTS

1. Requests and responses thereto shall be transmitted directly between the central authorities.

2. Requests shall be made in writing. In urgent circumstances, or where otherwise permitted by the

Requested State, requests may be made orally but shall be confirmed in writing thereafter.

ARTICLE V - CONTENTS OF REQUESTS

1. A request shall contain such information as the Requested State requires to execute the request, including:

- a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
- b) a description of the nature of the investigation or proceedings including a statement setting out the relevant facts and laws;
- c) except in cases of requests for service of documents, a description of the essential acts or omissions or matters alleged or sought to be ascertained;
- d) the purpose for which the request is made and the nature of the assistance sought;
- e) details of any particular procedure or requirement that the Requesting State wishes to be followed;
- f) specification of any time limit within which compliance with the request is desired; and
- g) any special requirements for confidentiality and the reasons therefor.

2. Requests for assistance may also, to the extent necessary, contain the following information:

- a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
- b) a statement as to whether sworn or affirmed evidence or statements are required;
- c) a description of the information, statement or evidence sought;
- d) a description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked

to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated; and

- e) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

3. The Requesting State shall supply such additional information as the Requested State considers necessary to enable the request to be fulfilled.

ARTICLE VI - REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused when in the opinion of the Requested State the execution of the request would seriously impair its sovereignty, national security or other essential public interests or for any reason provided by its domestic law.

2. Assistance may be refused if:

- a) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, constitute an offence; or
- b) provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State.

3. The Requested State may postpone assistance if execution of the request would interfere with any ongoing proceeding or investigation in the Requested State.

4. Before denying or postponing assistance pursuant to this Article, the Requested State shall, through its central authority,

- a) promptly inform the Requesting State of the reason for considering denial or postponement; and
- b) consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.