



## Commonwealth Consolidated Acts

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### MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987 SECT 12

#### 12 Requests by Australia

- (1) Australia may request the appropriate authority of a foreign country:
  - (a) to arrange for:
    - (i) evidence to be taken in the foreign country in accordance with the law of that country; or
    - (ii) a document or other article in the foreign country to be produced in accordance with the law of that country;

for the purposes of a proceeding or investigation relating to a criminal matter in Australia; and

- (b) to arrange for the evidence, document or other article to be sent to Australia.
- (2) To remove any doubt, it is stated that:
  - (a) any evidence may be taken; or
  - (b) any document or other article may be obtained;

in the foreign country even though, under Australian law:

- (c) the evidence could not have been taken; or
  - (d) the document or other article could not have been obtained;

by using in the circumstances processes similar to those used in the foreign country.

- (3) When making a request under subsection (1), Australia may also request that an opportunity be given for the person giving evidence, or producing the document or other article, to be examined or cross-examined, through a video link, from Australia by:
  - (a) any party to the proceeding or that party's legal representative; or
  - (b) any person being investigated or that person's legal representative.

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### MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987 SECT 13

#### 13 Requests by foreign countries

- (1) Where a request is made by a foreign country (*requesting country*) that:
  - (a) evidence be taken in Australia; or
  - (b) documents or other articles in Australia be produced;

for the purposes of a proceeding in relation to a criminal matter in the requesting country or another foreign country, the Attorney-General may, in his or her discretion, by writing in accordance with the approved form, authorise the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the requesting country.

- (2) Where the Attorney-General authorises the taking of evidence or the production of documents or other articles under subsection (1):
  - (a) in the case of the taking of evidence—a Magistrate may take the evidence on oath of each witness appearing before the Magistrate to give evidence in relation to the matter, and a Magistrate who takes any such evidence shall:
    - (i) cause the evidence to be put in writing and certify that the evidence was taken by the Magistrate; and
    - (ii) cause the writing so certified to be sent to the Attorney-General; or
  - (b) in the case of the production of documents or other articles—a Magistrate may, subject to subsection (6), require the production of the documents or other articles and, where the documents or other articles are produced, the Magistrate shall send the documents, or copies of the documents certified by the Magistrate to be true copies, or the other articles, to the Attorney-General.
- (3) The evidence of such a witness may be taken in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).
- (4) The Magistrate conducting a proceeding under subsection (2) may permit:

- (a) the person to whom the proceeding in the requesting country relates;
- (b) any other person giving evidence or producing documents or other articles at the proceeding before the Magistrate; and
- (c) the relevant authority of the requesting country;

to have legal representation at the proceeding before the Magistrate.

(4A) If the requesting country has so requested, the Magistrate conducting a proceeding under subsection (2) may permit:

- (a) any person to whom the proceeding in the requesting country relates or that person's legal representative; or
- (b) the legal representative of the relevant authority of the requesting country;

to examine or cross-examine, through a video link, from the requesting country any person giving evidence or producing a document or other article, at the proceeding.

- (5) The certificate by the Magistrate under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present:
  - (a) the person to whom the proceeding in the requesting country relates or his or her legal representative (if any);
  - (b) any other person giving evidence or producing documents or other articles or his or her legal representative (if any).
- (6) Subject to subsections (7) and (8), the laws of each State or Territory with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of that State or Territory apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents or other articles, for the purposes of this section.
- (7) For the purposes of this section, the person to whom the proceeding in the requesting country relates is competent but not compellable to give evidence.
- (8) For the purposes of this section, a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in the requesting country or another foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in that country.

- (9) A duly authenticated foreign law immunity certificate is admissible in proceedings under this section as *prima facie* evidence of the matters stated in the certificate.
- (10) Subsection (8) does not apply in a case where its application would be inconsistent with a provision of a mutual assistance treaty between Australia and the requesting country concerned.

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