

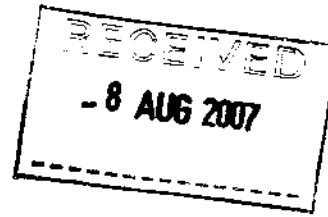


SENATOR THE HON. DAVID JOHNSTON

Minister for Justice and Customs
Senator for Western Australia

624 & 5860

Mr Michael Walton
Committee Member
NSW Council for Civil Liberties
PO Box 201
GLEBE NSW 2037



8 AUG 2007

Dear Mr Walton

I refer to your letter of 27 December 2006 seeking clarification of evidence presented at the Joint Standing Committee on Treaties on 4 September 2006 by Ms Joanne Blackburn of the Attorney General's Department and Federal Agent Tim Morris of the Australian Federal Police.

It is clear from the questions posed that there remains confusion regarding the provision of police to police assistance as opposed to mutual assistance, and the provision of information or intelligence as opposed to evidence.

The AFP is authorised to provide information to partner agencies in combating transnational crime in accordance with section 8 and 60A of the *Australian Federal Police Act 1979*, through Ministerial Direction issued pursuant to section 37(2) of the Act, and associated AFP policy.

At an operational level, police to police relationships are governed by arrangements such as Memoranda of Understanding (MOU) and international conventions such as as the *United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substance 1988*.

Australia is a party to the *United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988* in which Article 9 dictates the manner in which law enforcement agencies shall cooperate, subject to their respective domestic, legal and administrative systems, with one another to suppress the trafficking and possession of narcotics. In particular the convention states that law enforcement agencies **shall** cooperate with one another in conducting enquiries particularly in relation to identifying the whereabouts and activities of persons suspected of being involved in the possession and trafficking of narcotics.

Further to this, in January 2006 Justice Finn of the Federal Court delivered a ruling regarding the provision of police to police assistance. In this matter it was determined that the AFP had acted lawfully and in accordance with all legal obligations when it disclosed information to the Indonesian authorities which ultimately led to the arrest of the so called 'Bali 9'.

In this matter, the Court strongly affirmed the manner in which the AFP lawfully and legitimately exchanged information with the Indonesian Police. It involved cooperation with the Indonesian Police "to support effective action against multi-jurisdictional crime" Justice Finn's view was that 'there was a rational and proper police purpose for the making of the request' and the AFP members 'were acting in the performance of their functions under the AFP Act 1979'.

As pointed out by Ms Blackburn during the Joint Standing Committee hearing, mutual assistance is the process through which countries provide and obtain formal government to government assistance in criminal investigations and prosecutions. Generally a mutual assistance request will be required where a country seeks assistance which involves the exercise of coercive powers, where evidence is required in an admissible form for use in a trial or where a country seeks assistance for which it requires a formal mutual assistance request under its law.

Death Penalty

In providing police to police assistance on matters which might result in the death penalty, the AFP has regard to the AFP Guidelines. The revised AFP Guidelines are publicly available on the AFP's website. These guidelines clearly reflect the Government's policy on police to police assistance.

The AFP Guidelines state the AFP may provide assistance, without reference to the Attorney-General or the Minister for Justice and Customs, until charges are laid for an offence that attracts the death penalty. After charges have been laid for an offence attracting the death penalty, the AFP will seek advice from the Attorney-General or the Minister for Justice and Customs to ensure ongoing AFP actions correlate with Australian Government policy and other international obligations.

The Minister is provided with a written AFP Ministerial submission (brief) which outlines the background, full details and relevant considerations of the request to authorise the continuation of police to police assistance in post-charge death penalty situations. Should the Minister require further information or clarification he may request a further written or verbal brief from the AFP in order to make a decision. The considerations the Minister may take into account vary on a case by case basis.

Since the formulation of these guidelines, the Minister has been asked three times to authorise the continuation of police to police assistance in post-charge death penalty situations. In these situations, the Minister authorised the assistance to continue in the form of forensic support, intelligence and Foreign Law Enforcement Agency liaison. Assistance was provided to the Indonesian National Police (INP), the Royal Malaysia Police (RMP), and the Tonga Police Force (TPF). On all occasions, no guarantee was

sought from these agencies' government that the death penalty would not be sought or applied in relation to the investigation.

International law enforcement operates on a collaborative basis to effectively combat transnational crimes including drug trafficking, people smuggling, terrorism and child sex tourism. The AFP regularly undertakes best practice reviews of all policies, procedures and practical guides and will continue to review its internal governance framework.

I am satisfied that the current legislative and governance arrangements through which the AFP conduct their business, both on a police to police basis or via mutual assistance, are adequate.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Johnston', with a long, sweeping flourish extending to the right.

David Johnston
Minister for Justice and Customs
Senator for Western Australia