

**TREATY BETWEEN
AUSTRALIA AND THE HELLENIC REPUBLIC
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS,
DONE AT ATHENS ON 4 JULY 2002**

Documents tabled 17 September 2002:

- **National Interest Analysis**
- **Text of the treaty action**

Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters, done at Athens on 4 July 2002.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed to bring into force the Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters, done at Athens on 4 July 2002 (“the Treaty”).

Date of proposed binding treaty action

2. Article 22.1 of the Treaty provides that the Treaty will enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for entry into force of the Treaty have been complied with. The Treaty was signed on 4 July 2002. No date has been settled for the proposed entry into force of the Treaty.

Date of tabling of the proposed treaty action

3. 17 September 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

4. The purpose of the Treaty is to enable Australia and Greece to assist each other in the investigation and prosecution of serious crime including offences relating to taxation, customs duties, foreign exchange control and other revenue matters. Australia has similar Mutual Assistance treaties with a number of other countries including the United Kingdom and Canada.

5. The Treaty is based on the Australian Model Mutual Assistance in Criminal Matters Treaty, although there are some minor technical variations. Mutual Assistance treaties allow law enforcement agencies to obtain information and evidence needed for investigating and prosecuting serious crime.

Reasons for Australia to take the proposed treaty action

6. Mutual assistance in criminal matters treaties are a recent development in international efforts to combat serious crimes which cross international boundaries, such as drug trafficking and money laundering. These treaties enable Australia and the treaty partner to assist each other in the investigation and prosecution of serious crime.

7. Treaties on mutual assistance in criminal matters are not the only way in which Australia and another country or territory can assist each other in the investigation and prosecution of serious crime. Assistance based on reciprocity is possible where both parties have mutual assistance laws enabling assistance to be requested and provided in the absence of a treaty. The Treaty will be a reliable and effective means of securing such assistance between Australia and Greece because it will create an obligation in international law and is designed to accommodate the relevant procedures of both countries. It will therefore facilitate and expedite the execution of mutual assistance requests by both countries.

8. Mutual assistance treaties provide benefits to Australia by enabling Commonwealth, State and Territory law enforcement agencies to obtain information and evidence from the treaty partner needed for investigations and prosecutions in Australia. These treaties also enable Commonwealth, State and Territory law enforcement agencies to seek assistance in locating, restraining and forfeiting the proceeds of criminal activity in the treaty partner's jurisdiction in relation to criminal activity that took place in Australia.

Obligations

9. The Treaty obliges Australia and Greece to assist each other in criminal matters (Article 1.1), including offences relating to taxation, customs duties, foreign exchange control and other revenue matters (Article 1.2). Assistance to be provided includes:

- taking evidence and obtaining statements (Article 11);
- providing documents and other records (Article 15);
- executing requests for search and seizure (Article 16);
- locating and preventing any dealing in, transfer or disposal of proceeds of crime and enforcing orders in relation to such proceeds ("proceeds of crime" is defined to include any benefit derived from the commission of an offence or represents the value of property derived, directly or indirectly, from the commission of an offence, thus covering the full range of proceeds which can be confiscated under the *Proceeds of Crime Act 1987*) (Article 17);
- making persons (including prisoners) available to give evidence or assist investigations (Articles 12 and 13); and
- serving documents (Article 10).

10. Assistance to be provided under the Treaty does not include the arrest or the enforcement of verdicts (Article 1.3), the execution of criminal judgements imposed by the courts of the treaty partner (except to the extent permitted by the law of the Requested State

and the Treaty), the transfer of persons in custody to serve sentences or the extradition of any person (Article 1.4).

11. Both Parties are to designate Central Offices to transmit and receive requests for assistance made under the Treaty. These will be the Commonwealth Attorney-General's Department in Canberra and the Greek Ministry of Justice in Athens (Article 3).

12. The obligation to provide assistance is qualified by certain internationally accepted exceptions. These include an obligation to refuse assistance in cases involving political or military offences (Article 5.1(a)) or where there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, sex, religion, nationality or political opinions (Article 5.1(c)). Assistance may also be refused where the Requested State considers that granting assistance would seriously impair its sovereignty, security, national interest or other essential interests (Article 5.1(d)).

13. Assistance may be refused where the request relates to an offence which carries the death penalty (Article 5.2(e)). Australia's position on the provision of assistance in relation to offences carrying the death penalty (as set out in amendments, which commenced in 1997, to section 8 of the *Mutual Assistance in Criminal Matters Act 1987*) was made clear to Greece in the course of the negotiations. Although Greece abolished the death penalty for ordinary crimes in 1993 it still retains the death penalty for certain military crimes.

14. The Requesting Party may request that each Party, subject to its law, keep confidential the requests it receives for assistance and its responses to such requests (Article 9.1), as well as information it receives in response to a request under the Treaty (Article 9.2). The Requesting State must not use evidence obtained, or information derived therefrom, for purposes not stated in the request without the consent of the Requested State (Article 9.3).

15. The Requested State is to bear all costs of executing a request except:

- the expenses associated with conveying a person, and any custodial or escorting officers, to and from the Requesting State to appear as a witness or otherwise assist in criminal investigations or proceedings there; and
- where required by the Requested State, exceptional expenses of fulfilling a request are to be met by the Requesting State (Article 20.2).

16. There are numerous minor technical variations between the text of the Treaty and that of the Australian Model Mutual Assistance in Criminal Matters Treaty but there are no significant variations from the Model Treaty.

Implementation

17. In Australia, the formal requesting or granting of international assistance in criminal matters is governed by the *Mutual Assistance in Criminal Matters Act 1987* ("the Act"). Under the Act the Australian Government is able to give effect to bilateral mutual assistance treaties with other countries.

18. Regulations will be made under the Act to provide that the Act applies to Greece subject to the Treaty. The text of the Treaty will be set out in the Regulations.

19. There will be no changes to the existing roles of the Commonwealth and the States and Territories as a consequence of implementing the Treaty.

Costs

20. The Commonwealth Attorney-General's Department in Canberra will transmit and receive requests for assistance made under the Treaty on behalf of the Attorney-General as the Central Office for Australia. The expenses of the Central Office will be met from existing Departmental funds.

Consultation

21. Information on the proposed Treaty has been provided to the States and Territories through the Commonwealth-State Standing Committee on Treaties' Schedule of Treaty Action. No negative reaction to the Treaty has been received.

Regulation Impact Statement

22. A Regulation Impact Statement is not required for the proposed treaty action.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

23. The Treaty does not provide for the negotiation of future legally binding instruments but envisages the possibility of the Central Offices entering into subsidiary arrangements consistent with the Treaty and the laws of the Parties. The Treaty is silent as to the procedure to amend the Treaty. As such, the provisions of the Vienna Convention on the Law of Treaties will apply to any amendments.

Withdrawal or denunciation

24. The Treaty provides that either Contracting Party may terminate the Treaty by notice in writing at any time. The Treaty will cease to be in force on the one hundred and eightieth day after the day on which notice is given (Article 22.3).

Contact details:

International Crime Branch
Criminal Justice Division
Attorney-General's Department