

<http://smartraveller.gov.au/guide/all-travellers/when-things-go-wrong/arrested-or-in-prison.html>

### **Consular visits**

If you're an Australian detained overseas and you request consular assistance, an Australian consular officer will visit you as soon as possible after notification of your detention and once permission is received from the local authorities. Timing of this visit may depend on the severity of the charge, your location and consular staff resources.

Australian consular officers will not make assumptions about your guilt or innocence. Their primary interest is your welfare.

When providing consular assistance to you when you're detained, consular officers will seek to ensure that you:

- have regular contact with a consular officer
- have access to legal advice
- are treated no less favourably than local citizens detained for similar offences
- are subject to humanitarian standards of prisoner welfare
- have your basic needs met.

Consular officers may be able to assist you in obtaining information about local visiting, phone and mail regulations and censorship, privileges and social and welfare services. If available, consular officers will also seek to provide information on whether it's possible for you to work in the prison.

If you were receiving Centrelink payments or were paying/receiving child support before entering custody, ask a consular officer about advising the Department of Human Services that you have entered custody so that you avoid accruing a debt.

Consular officers will attempt to maintain contact with you throughout your period of detention, and should you be sentenced, your prison term. The frequency of visits will depend on factors such as the location of the prison, length of the sentence, and the availability of other local support.

### **Seeking legal advice**

Australian consular officers will provide Australians detained overseas with information to help them obtain legal advice.

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While consular officers can provide you with a list of local English-speaking lawyers, consular officers are not lawyers and cannot provide you or your family with legal advice or make recommendations as to which lawyer you should choose. You have the responsibility to choose your own lawyer and maintain close interest in your case.

Consular officers are not able to make representations to the court on your behalf. Consular officers are not able to provide interpreting services and you may need to make arrangements through your lawyer to obtain a suitable interpreter if required.

### **Family liaison**

Consular officers will generally only pass on information to your family if you agree and provide consent.

While you're in detention, we encourage you to maintain direct contact with your family or friends and keep them informed of your health and welfare needs. We also recommend that you allow your family to liaise directly with your appointed legal representative in order for them to stay informed about your case. However, consular officers won't be able to confirm your welfare or situation with your family unless you provide consent.

If you're not able to make contact with your family, consular officers may be able to assist. Under the *Privacy Act 1988*, however, consular officers will generally only pass on information to your family if you agree and provide consent. If you don't want your family to be notified, your request will be respected and information will be withheld from your family and friends.

Detainees relying on consular officers to provide information to family and friends should nominate one person as a primary point of contact. This ensures information is passed in a coordinated and managed way and avoids confusion.

### Possible financial assistance

In the majority of circumstances, the Australian Government cannot pay your overseas legal fees or bail.

### **Financial assistance from family**

In some countries, Australian prisoners, with the cooperation of prison authorities, are able to operate commercial bank accounts to receive funds from family and friends. If this is possible, a consular officer should be able to assist you with setting up the account or making other arrangements for you to receive funds from your family

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or friends to pay for lawyers or items you may need to purchase, such as phone cards or stamps. If prisoners are unable to operate commercial bank accounts, consular officers can assist by providing family or friends with the relevant information (or contact details of the prison, so additional information can be obtained) on the procedures for transferring funds to a prisoner.

### **Financial assistance from the government**

In the majority of circumstances, the Australian Government cannot pay your overseas legal fees or bail. Irrespective of where you are, Australians are not entitled to receive Medicare benefits while in prison overseas.

### **Prisoner Loan Scheme**

In some instances a consular officer may be able to arrange a loan for you from the Australian Government under the Prisoner Loan Scheme.

However, a loan will only be arranged if:

- adequate food and medical facilities and other essentials such as bedding, clothing and soap are not provided by the prison
- you're unable to organise for a loan to be provided from family or friends, and
- the country where you're imprisoned is on the approved country schedule.

Loans granted under the Prisoner Loan Scheme must be repaid after your release.

Failure to repay the loan may result in your ineligibility to obtain a new or replacement Australian passport, and your current passport may be cancelled if you've incurred a debt for a loan from the Australian Government while in prison.

### **Serious Overseas Criminal Matters Scheme**

Assistance under the Serious Overseas Criminal Matters Scheme is provided only in the most exceptional circumstances, usually if you're facing a possible period of imprisonment equal to or longer than 20 years, or the death penalty.

In the absence of special circumstances that fit within the scope of the scheme:

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- a lack of financial means to pay for legal fees is **not** sufficient in itself to justify the provision of financial assistance
- the availability of legal assistance in the overseas jurisdiction will usually mean you will **not** be eligible to receive financial assistance under the scheme.

Applications can be made for grants to cover legal costs relating to the defence and other related expenses, however financial assistance provided under the scheme is not intended to be used to hire a private lawyer in place of an overseas court-appointed lawyer or public defender.

### Special Circumstances Scheme

Assistance under the Special Circumstances Scheme is only provided where no other scheme of legal financial assistance applies, but there is a moral obligation on the Commonwealth to make a grant, or where a statutory scheme of legal financial assistance applies, but produces an unintended, anomalous, inequitable or otherwise unacceptable result. The fact that you are an Australian citizen does not create a moral obligation on the Commonwealth.

For both schemes, assistance will **not** generally be granted to people who can meet their costs without incurring serious financial difficulty, are eligible for legal assistance in the overseas country, or do not have a continuing connection with Australia. The Attorney-General's Department will not normally cover the cost of any legal fees or expenses incurred before an application is made.

### How to apply

If you wish to apply for financial assistance for legal fees, you'll need to complete the relevant forms, available from the [Attorney-General's Department website](#). If you cannot access these forms online, ask a consular officer to provide them to you on their next visit.

For further information about these schemes contact the Attorney-General's Department on 02 6141 4770 (within Australia) or +61 2 6141 4770 (outside Australia) during business hours.

### Your welfare and the legal process

With your permission, consular officers, in consultation with your legal representative, can take up any justified and serious complaints about ill-treatment or discrimination with the local authorities. Whenever possible, prisoners should first make their complaints through the prison system and/or case manager prior to raising their concerns with consular officials.

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You should be aware that the Australian Government can generally only make representations to local authorities if:

- you're receiving inferior treatment to that which would be given to a local prisoner
- there are lengthy and unreasonable delays in bringing the case to court or with the subsequent trial (in comparison to similar cases for locals in the country of your arrest)
- you're not receiving medical care

The Australian Government may also consider making formal representations to the host government in support of applications for pardon or clemency and, if a prisoner is facing a death sentence, converting that sentence to a prison term.

While the Australian Government will closely monitor the case and expect procedural fairness, there can be no guarantee that our actions will achieve your desired outcome or that the foreign government will respond to our representations.

### Health concerns

If you have health issues, it's your responsibility to discuss these in the first instance with the prison authorities and ask to see the prison doctor or dentist. If you have ongoing health concerns—for example, if you are or think you may be HIV positive—you should discuss this with the prison doctor. Should you believe your concerns have not been dealt with by prison authorities, you should advise your consular officer and seek their advice and support.

### International Transfer of Prisoners Scheme

Under the International Transfer of Prisoners Scheme, Australia has agreements with a number of countries which can, if certain conditions are met, enable Australian prisoners to serve out the remainder of their sentence in an Australian prison.

If you're sentenced to imprisonment in a foreign country and all appeal avenues have been exhausted, you may wish to ask your consular officer to provide you with an information pack on the scheme. While there are no guarantees on the outcome, consular officers will assist you with your application as much as possible.

### **When can a prisoner be transferred to Australia?**

You may be able to transfer back to Australia if:

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- you're an Australian citizen, or an Australian permanent resident who has community ties with an Australian state or territory, such as having close relatives living in that state or territory
- you're imprisoned in a country with which Australia has a transfer agreement. Australia is currently able to undertake transfers with Thailand, Hong Kong and Vietnam through bilateral agreements and with over 60 countries through the Council of Europe Convention on the Transfer of Sentenced Persons. A full list of countries is available at [ag.gov.au](http://ag.gov.au)
- the terms of transfer have been agreed to by the Australian Government, the government of the country in which you're being held, yourself and the government of the Australian state or territory to which you wish to transfer
- your transfer is not likely to prevent your surrender to an extradition country
- you have at least six months of your sentence remaining to be served (unless this condition is waived or varied)
- neither the sentence of imprisonment nor the conviction on which it's based is subject to appeal
- the offence for which you're serving a sentence would also be an offence in Australia (unless this condition is waived).

Your consular officer will be able to:

- tell you whether the country you're held in is covered by an agreement
- give you an information pack on the scheme (containing an application form)
- provide further information on eligibility requirements and conditions for transfer. Further information is also available on the [Attorney-General's Department website](http://Attorney-General's Department website) or by emailing the Attorney-General's Department on [itp@ag.gov.au](mailto:itp@ag.gov.au)
- keep you updated on the progress of your application.

### **Pardons**

Consular officers cannot get Australians out of prison or provide the arresting authorities with any written guarantees to secure your release from prison.

The Australian Government may, if requested, initiate or support your application for a pardon. This is only where local law and practice allow and where you have served a sentence approximately equivalent to the sentence that you would have served had the offence been committed in Australia, less one year to provide time for the local authorities to process the pardon application.

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The granting of a pardon is entirely a matter for the authorities of the country in which the person has been imprisoned.

### Adapting to life in prison overseas

There are often a number of things that you can do to help yourself while in prison overseas. Even though conditions in some prisons may be difficult, you should try to adapt and find activities, like sport or regular exercise, or employment to keep yourself active and occupied.

Prison conditions and management vary from country to country and prison to prison, so you may need to learn new rules and routines to adjust to the prison environment.

You may wish to ask the prison authorities for advice on:

- whether there is an opportunity for you to learn the local language (if you're imprisoned in a country where English is not widely spoken)
- how many letters you're allowed to send. Sometimes remand prisoners can send more letters which will give you a greater opportunity to get your personal affairs in order
- if and how often you're able to make telephone calls
- if there's an opportunity to undertake study, or if you're permitted to arrange to study through an external educational institution
- if any activities within the prison can contribute to a sentence reduction
- if it's possible to work inside the prison, whether working is compulsory, and whether this work will provide you with an income.

If you have difficulties communicating with the prison authorities, or arranging activities, you should discuss your options with a consular officer.

### Passport cancellation or refusal in relation to serious foreign offences

You should be aware that under the *Australian Passports Act 2005*, the Minister for Foreign Affairs may cancel your Australian passport (or other Australian travel document) if you're the subject of an arrest warrant issued in a foreign country in respect of a serious foreign offence, or if you're prevented from travelling internationally by a legal order or direction issued under the law of a foreign country (including imprisonment) in connection with a serious foreign offence. The Minister may also refuse to issue you a further Australian passport

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pending the outcome of all legal proceedings in a foreign country in relation to a serious offence.

The cancellation or refusal of your Australian passport in these circumstances does not affect your status as an Australian citizen or the provision of Australian consular assistance to you.

### Returning to Australia

Consular officers can provide you with the contact names and numbers of prisoner support organisations in your state or territory. These organisations can assist you to re-establish your life in Australia.

For details of a range of services provided by the Department of Human Services that may assist on your return to Australia, visit the [Department of Human Services website](#). This provides information about:

- referrals to Employment Service Providers to help you look for work
- Centrelink payments such as Newstart Allowance, Age Pension, Disability Support, pensions, various family and parenting payments and payments for carers
- Child Support services if you are responsible for making payments for dependent children or if you are receiving child payments
- Medicare services such as reissue of Medicare cards, enrolment for Medicare

### Crisis payment – prison release

In addition to ongoing Centrelink payments, some of which are mentioned above, you may also be entitled to a one-off crisis payment on release. To qualify for Crisis payment – prison release you must:

- claim within 7 days of release
- be in severe financial hardship
- have been in prison for at least 14 days as a result of being charged with an offence
- apply within Australia, and
- be entitled to a Centrelink pension or benefit

If you are eligible for Centrelink payments, on your return to Australia you can usually receive:



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- Crisis Payment-prison release immediately upon your return - equal to one week of your primary payment
- Primary payment (generally Newstart Allowance) a fortnight later – comprising of two weeks payment

You can ask for an advance of up to 7 days of your primary payment, but your next fortnightly payment will be reduced by this amount.

Keep documentation that states your period in custody as you will need to provide this if you claim payments

### Information for family members

If you have concerns about a family member arrested or detained overseas or would like an update on their situation, you should contact DFAT's Consular Operations Branch in Canberra which has overall responsibility for consular case management. Information provided is subject to privacy considerations.

Department of Foreign Affairs and Trade  
Attn: Consular Operations Branch  
RG Casey Building  
John McEwen Crescent  
BARTON ACT 0221  
Phone 02 6261 3305 or 1300 555 135  
(24-hour number, cost of a local call).

While we can help you and you can contact us at any time, our primary client is the person who is detained.

If you'd like to visit your family member detained overseas, you should contact us for information on visiting arrangements before leaving Australia. Prison visiting arrangements vary widely from country to country and we recommend you make arrangements before you depart.

Consular officers can also provide advice or contact details of prison authorities that can provide specific information on what can be sent or taken into prisons overseas, provide you with the full postal address and telephone number of the prison, details of the prisoner's legal representative and information about court proceedings.

### Getting help overseas

The Australian Government will do what it can to help Australians in difficulty overseas, but there are limits to what can be done.

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### **Consular services**

The Australian Government will do what it can to help Australians in difficulty overseas; however, there are legal and practical limits to what can be done.

The [Consular Services Charter](#) sets out the standard of services all Australians can expect to receive from consular staff, including what they can and cannot do.

Contact details for Australian missions overseas are available on the [Department of Foreign Affairs and Trade website](#) and in our [travel advisories](#).

Australia has an agreement with Canada to provide consular assistance to Australians in some countries. Contact details for Canadian missions providing consular assistance to Australians are also available on the [Department of Foreign Affairs and Trade website](#).

The 24-hour Consular Emergency Centre in Canberra can also be contacted for assistance from anywhere in the world on +61 2 6261 3305 or 1300 555 135 (local call cost within Australia).

### **Counselling services**

Australians overseas in need of counselling services can contact our Consular Emergency Centre on +61 2 6261 3305 to be transferred to a Lifeline telephone crisis supporter.

[http://dfat.gov.au/about-us/publications/corporate/australian-consular-operations-handbook/Pages/part-2-consular-services-welfare-of-australians-overseas.aspx#Chapter\\_6%3a\\_Arrest%2c\\_detention\\_and\\_imprisonment](http://dfat.gov.au/about-us/publications/corporate/australian-consular-operations-handbook/Pages/part-2-consular-services-welfare-of-australians-overseas.aspx#Chapter_6%3a_Arrest%2c_detention_and_imprisonment)

## **Australian Consular Operations Handbook**

### **Part 2: Consular services: welfare of Australians overseas**

#### **Chapter 6: Arrest, detention and imprisonment**

##### **6.1 Consular role in relation to Australians arrested or detained overseas**

The terms arrested or detained apply to any Australian arrested and/or being held for investigation, whether charges have been laid or not, or confined to prison.

The arrest or detention of Australians overseas is a complex issue in consular protection. People arrested or detained require sensitive and well-considered assistance, possibly over an extended period. Sound guidance and policy direction may be required in handling bilateral relations in these cases. The nature of the crime committed or the long-term nature of detention may attract media and parliamentary interest in Australia, calling for careful and considered responses by Government and the Department.

Consular protection in the case of arrested, detained or imprisoned people means ensuring, as far as possible that:

- Australians arrested, detained or imprisoned overseas are able to see an Australian consular officer and receive consular assistance
- Australians overseas charged with offences against local law or otherwise punished have access to appropriate legal defence and receive a fair trial under local law
- Australians imprisoned overseas are treated no less favourably than local citizens confined for similar offences
- the basic needs of Australian prisoners are met and the prisoners enjoy humanitarian standards of prisoner welfare.

##### **6.2 The Vienna Convention and access to detained persons**

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Consular officers should familiarise themselves with Article 36 of the Vienna Convention on Consular Relations located on the UN Treaty website <https://treaties.un.org/>

[Article 36 of the Convention \[PDF\]](#) specifies the consular officer's right to visit, converse and correspond with, and arrange legal representation for nationals in prison. In accordance with the *Privacy Act*, **a consul must not, take action on behalf of a prisoner if the prisoner opposes it.**

The Convention also obliges the authorities of a state to inform the consular post without delay if they have detained one of its nationals and the detained person requests it, and to forward any communication from a detained person to that person's consul. The authorities must, furthermore, inform the detainee of these rights.

The Australian Government takes a serious view of any denial of rights to consular access. Posts should report any denial promptly to the Department. The report should be sufficiently detailed to enable the Department to take up the case immediately, either with the state's diplomatic representation in Canberra or with the foreign ministry of a state not represented in Australia.

Countries which have ratified or acceded to the Convention are listed at Appendix 5 in the Consular Policy Handbook.

The rights of prisoners are further reinforced by the United Nations declaration on the human rights of persons who are not nationals of the country in which they live, which provides that 'any alien shall be free at any time to communicate with the consulate or diplomatic mission of the State of which he is a national'. (UNGA Resolution 40/144, Article 10)

The International Covenant on Civil and Political Rights also makes specific provisions relating to persons arrested or detained, in the following terms:

Article 9(3): 'Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...'

Article 9(4): 'Anyone who is deprived of liberty by arrest or detention shall be entitled to take proceedings before a court...'

Article 10: 'All persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person...'

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Article 14: 'All persons shall be equal before the courts and tribunals...'

Article 14(3C): 'In the determination of any criminal charge against him everybody shall be entitled ... (c) to be tried without undue delay ... (f) to have the free assistance of an interpreter...'

Article 14(7): 'No one shall be liable to be tried or punished again for an offence for which he has finally been convicted or acquitted in accordance with the law of penal procedure of any country'.

### **6.3 Assistance to arrested or detained persons**

Consular officers should ensure that local authorities bring these cases to their attention promptly. To achieve this, good relationships should be maintained with appropriate local officials, particularly police.

When engaging in any consular activity, officers should meticulously avoid giving the impression that they are prejudging the merits of a case or the treatment of the person detained.

When consular officers learn of the arrest of an Australian they should attempt to visit the client at the earliest opportunity. Even if posts are advised by an authoritative source that an arrested or imprisoned Australian does not want a consular visit, they should make every effort to make direct contact with the Australian to confirm those wishes and satisfy themselves that the person is fully acquainted with consular services. Posts should not consider an arrest letter as a substitute for an early visit.

If the arrest takes place in a country with no resident Australian mission, the post is encouraged to make arrangements with other Commonwealth missions or consular sharing partners for an initial visit and, when appropriate, a follow up prison visit. In the absence of these arrangements, the post should explore the possibility of having a local representative of a charitable or religious organisation make an initial visit.

When a prisoner elects not to receive consular visits, these wishes should, as far as possible, be confirmed in writing and the prisoner advised that their request will need to be reconfirmed each 12 months. Prisoners should also be made aware that they may request consular visits to be resumed at any time.

A list of legal practitioners or firms willing to represent foreigners and showing specialities should be prepared at each post for prisoners and other Australians who need this information. The list cannot indicate any preference for one practitioner/firm over another and consular

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officers must not give an oral or other indication of preference. The list should be checked and updated at least annually. All lists must contain a disclaimer that neither the post nor the Australian Government accepts any responsibility for the ability or probity of the practitioners on the list or the fees they might charge.

### **6.4 Welfare of prisoners**

When Australians are imprisoned overseas, consular officers should show a continuing interest in their situation. Their concern, however, is with the prisoner's welfare and they should not make assumptions about the prisoner's guilt or innocence.

The crimes which prisoners have committed, or have allegedly committed, have no bearing on the responsibility to provide a sensible humanitarian response to their basic needs. Consular officers should carefully monitor the physical conditions of imprisonment, including access to medical and dental care, and make full reports to the Department. Consular officers should show compassionate understanding of the psychological impact of imprisonment and separation from the home environment and culture. Serious problems of adjustment should be reported to the Department.

Consular officers are expected to have the personal and professional skills to handle the welfare needs of prisoners in a foreign environment. However, when a prisoner appears to be suffering discrimination at the hands of the penal or judiciary authorities to the extent that a just treatment of the case and/or the physical welfare of the prisoner may not be reasonably assured, consular officers should urgently bring the situation to the attention of the Department.

Consular officers should maintain close contact with prison authorities to facilitate access and informal representations on behalf of prisoners and to maintain an awareness of prison conditions. Consular officers are responsible for ensuring that they are familiar with the actual living conditions in prisons where Australians are held.

Officers involved in prisoner welfare should be familiar with the United Nations approved Standard Minimum Rules for the Treatment of Prisoners ([Appendix 6A](#)). While the rules are not binding, officers should be ready to draw them to the attention of local authorities if it appears that they are not being observed.

### **6.5 Prisoner health**

Prisoners in foreign countries may face special problems arising from loneliness, disorientation, violence, racial discrimination, corruption, drugs and lack of access to adequate medical and dental attention.

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Physical or psychological ill-health may result and monitoring this aspect forms a significant part of prisoner welfare work.

Diagnosis of psychological conditions is a matter for an expert, not consular officers. Consular officers should, however, be alert to problems of behaviour and adjustment as these are a major determinant of how a prisoner will cope with deprivation of freedom.

When deciding any action necessary the consular officer must consider:

- the prisoner's own wishes, needs and financial resources
- prison rules and conditions
- facilities and services which can reasonably be provided by the Australian mission and local authorities
- assistance available from other sources, such as family, friends and welfare organisations.

The most common health problems concern food, standards of hygiene, and lack of adequate medical and dental services. In many countries the prison diet must be supplemented for western prisoners and, in some cases, prisoners have to provide their own basic medicines.

### 6.6 Reporting arrest/detention cases

All arrests must be reported promptly by cable to Assistant Secretary Consular Branch (AS CNB) and Assistant Secretary Passport Business Improvement and Technology Branch (AS PCB).

The **Arrest/detention checklist has been loaded into CMIS as a cable template** and should be used for all reporting except for subsequent visit reporting.

The template includes information about all aspects of a case except for regular visit reports. It is divided into five parts:

1. Personal details and details of the arrest
2. First visit to the detainee
3. Committal Proceedings
4. Trial
5. Appeals

When initially reporting an arrest, it is likely that little information will be known. Post should complete as much detail as is available, confirm passport information from PICS if required and delete the remaining points as necessary. It should be noted however, that posts should provide the other information as it becomes available.

The reporting cable must use the ODIN topic CONSULAR/Arrest and Detention.

If the arrest takes place after hours or appears political or likely to

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attract media interest, the post should alert the CEC immediately by telephone, followed by cable. Similarly, an immediate report should be made if the person detained or charged appears likely to suffer bodily harm or prejudice to property.

If the arrest/detention or charge appears political or intended to embarrass the Australian Government or likely to necessitate later diplomatic representations, the consular officer must immediately report the matter to the Head of Mission and to the Department classifying the case as Cat 1 (either red or orange – Chapter 4.3 refers).

High-profile cases, for example those involving Ministerial contact, a possible death sentence or receiving media coverage, should be reported by Cat 1 cable immediately.

If the charge relates to child sex offences, transnational organised crime (eg. drug trafficking, people smuggling, etc.), terrorism or corruption refer to chapter 3 for additional guidance and reporting requirements.

### 6.7 Visits to prisoners

As a general rule, consular officers must visit Australians in detention as soon as possible after arrest to provide them with a copy of the arrest letter and to obtain their consent to the disclosure and use of personal information for family and friends. All arrests must be reported promptly by cable to Assistant Secretary Consular Branch (AS CNB) and Assistant Secretary, Passport Business Improvement and Technology Branch, Australian Passports Office using the ODIN topic CONSULAR/Arrest and Detention.

**All government officials undertaking a prison visit MUST report promptly using the appropriate reporting template (ie Arrest/detention Checklist or the Subsequent Visit Checklist). The official must provide a full report to the relevant Australia diplomatic/consular post either the same day the visit takes place or no later than the first working day after the visit. Posts are responsible for the prompt transmission of the report to Canberra. Posts must ensure any government official/s undertaking prison visits are briefed on this requirement and posts must report any incidents of non compliance to AS CNB promptly.**

**Where it is assessed that a detainee does not have the ability to communicate with Australian officials or a legal representative this must be drawn to the attention of AS CNB immediately.**

### 6.8 Arrest/detention Checklist

#### Initial Prison Visit Checklist

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Download the [Arrest/detention Checklist \[DOC 47 KB\]](#)

### **Sample letter to detained person**

Download [sample letter to detained person \[DOC 27 KB\]](#)

Download [attachment to letter to detained person \[DOC 44 KB\]](#)

### **6.9 Subsequent Prison Visits**

After the initial visit, posts should arrange a visits program. Monthly visits are appropriate when the prevailing conditions of imprisonment are well below acceptable international or Australian standards. Posts will also need to take into account the level of dependence of prisoners on consular visits. Posts should not depart from a routine without the knowledge and understanding of the prisoner.

**All government officials undertaking a prison visit MUST report promptly using the appropriate reporting template (ie Arrest/detention Checklist or the Subsequent Visit Checklist). The official must provide a full report to the relevant Australia diplomatic/consular post either the same day the visit takes place or no later than the first working day after the visit. Posts are responsible for the prompt transmission of the report to Canberra. Posts must ensure any government official/s undertaking prison visits are briefed on this requirement and posts must report any incidents of non compliance to AS CNB promptly.**

**Where it is assessed that a detainee does not have the ability to communicate with Australian officials or a legal representative this must be drawn to the attention of AS CNB immediately.**

The visits program needs to take into account the substantial resources involved in visiting prisoners regularly and reporting on their welfare. The welfare needs of some clients may be met through other avenues, including rehabilitation and work programs run by prison authorities. Others have local support networks of families and friends or religious and social workers. Posts should remain alert to issues, such as whether questions brought up by prisoners during consular visits would be more appropriate for their legal representatives or prison authorities.

Posts are encouraged to regularly reassess their prison visits program. Consular Operations is prepared to consider proposals case-by-case. Proposals should identify any difficulties with the current visits program and nominate a visiting frequency for each client, taking into account language, social, culture, religious factors and the presence, or otherwise, of a local support network. Proposals should also

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identify any other relevant factors, including access to reverse charge telephone facilities or mobile phones that allow prisoners to communicate with family, friends and legal representatives.

For prisoners serving sentences longer than five years, it may be appropriate to program visits frequently in their first year of incarceration, less often through the middle of their sentence and more frequently again during the final year. During the final year, issues such as passport or visa renewal, arranging access to pre-release counselling, and so on need to be addressed.

Some existing long-term prisoners may request that the present program of visits continues unaltered. There should be sympathy for these requests when there is a genuine need, subject to resource availability.

To avoid disappointment or distress to prisoners, the visit program should not be fixed to particular days of the month.

Consular officers making prison visits should ensure that they obey prison regulations, particularly those applying to carrying items in and out of the prison. Breaking the rules could result in a curtailment of consular visits and punishment for the prisoner.

Prison visits serve to monitor the condition of the prisoner and the prison and to remind both the prisoner and the prison authorities of the Australian Government's continuing interest.

If consular access to the prisoner is denied, either at the time of arrest or during imprisonment, the post should inform Consular Operations promptly. The Government's clear intention is that access to Australian consular assistance should be sought unless prisoners indicate, personally and clearly, that they do not wish to see a consular officer.

At some posts, due to the location of the prison, the objectives of a visit can be achieved by telephone. While this option is acceptable, it is still preferable for those prisoners to be physically visited as regularly as possible. Notwithstanding that a prisoner visit takes place personally or by phone, a report in the format at 6.10 must be cabled to Consular Operations promptly.

Consular officers' regular reporting to Consular Operations on the welfare of prisoners is invaluable to the Department in keeping families informed when there is consent to do so. Prisoners have the primary responsibility, however, of communicating with their families and consular officers should remind them of this.

### **6.10 Subsequent Visit Checklist**

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Whenever a visit is made to a prisoner or arrestee, whether in person or by telephone, a report must be cabled to Consular Operations, using the ODIN topic CONSULAR/Arrest and detention as soon as possible after the visit.

### **Subsequent Prison Visit Checklist**

Download the [Subsequent Visit Checklist \[DOC 36 KB\]](#)

#### **6.11 Assistance to persons under investigation but not detained**

When Australians have been released on bail or are under investigation but not detained, posts should continue to seek regular updates on their welfare, including monitoring their legal proceedings.

#### **6.12 Arrest, detention or imprisonment of a minor**

The arrest and detention of a minor (an Australian under 18 years of age) will likely require an additional level of consular assistance. Cases involving the detention of a minor should be reported as Category 1. Particular issues that consular officers will need to take into consideration include:

- close monitoring of the minor's health and well-being, including conducting, when possible, weekly visits (at least until the minor is sentenced and settled into prison routines)
- close liaison and support to parents/family members of a minor when they visit the country of detention
- familiarity with local legal processes in relation to minors, for example the likelihood of the minor being tried as an adult. In the event that the minor will be tried as an adult, for example due to the seriousness of an offence, posts should cable details to Consular Operations as soon as possible. Consular Operations may seek legal advice on whether representation on this issue would be appropriate
- ensuring whenever possible that minors in pre and post trial detention are kept separate from adults, in accordance with the standard minimum rules for the treatment of prisoners ([Appendix 6A](#))
- if necessary, act as a liaison between the minor and an educational institution and/or child welfare agency in Australia.

These guidelines are not prescriptive. Additional guidance should be sought from the Head of Mission/Head of Post or Canberra on managing difficult or complex cases.

#### **6.13 Advice to the next of kin**

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In the context of consular work, the Department uses the term next of kin for a person nominated by the consular client as the contact point for passing on information about their predicament. In most cases, the next of kin is a relative of the client, but the client may nominate others as their next of kin, for example lawyers, doctors or friends.

Except in exceptional circumstances, the Department will only accept one next of kin. When a client requests more than one person be contacted, they should be asked to detail the reasons and be advised that the ability to accede to their request will be determined by Consular Operations.

Australians under arrest should be asked whether they wish the Department to inform their next of kin, and must be asked to confirm their wishes in writing. If they wish the next of kin to be informed, the post should inform the Department. The Department will pass on the message, initially by telephone if practicable, and will follow up this advice with a letter along the lines of the sample in [6.12](#) If the next of kin is at post, the consular officer should consult with Consular Operations on the dispatch of the arrest letter.

If the prisoner does not wish their next of kin informed, the officer must attempt to obtain confirmation of this in writing and then submit a written report to the Department. The prisoner should be advised that even though they may not consent to the release of any information, it is not unusual for information about their predicament to reach the media or relatives through other sources. In these circumstances, the Department may, if asked, confirm details already in the public domain and, if appropriate, correct any inaccuracies in existing reports.

### **6.14 Sample letter to the next of kin of detained person**

Download [sample letter to the next of kin of a detained person \[DOC 49 KB\]](#)

### **6.15 Attendance in court**

Normally, consular officers should try to be in court when an Australian citizen is charged with a criminal offence. If the trial is conducted in accordance with local practice, but is likely to be drawn out, they should not feel obliged to attend all sessions.

It would not normally be appropriate for consular officers to appear in court as witnesses. When in doubt, officers should consult the Department.

While attendance of a consul should not aim to influence the decision of the court, it does serve to remind the prisoner, the prisoner's

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lawyer, and the judiciary of the Australian Government's interest in the case.

A brief report on the outcome of the hearing should be sent to the Department as early as possible. In high profile cases this should be phoned to the Consular Emergency Centre.

### 6.16 Conduct of trials

In the conduct of the trial, the Government wants to ensure that a prisoner is legally represented and has access to an interpreter. Normally the essentials of a fair trial consist of the following elements:

- the accused person must be aware of the specific charges
- the accused must be given adequate time to prepare a case and be afforded the opportunity of summoning witnesses in defence
- the accused must be given the opportunity to know the substance and source of any evidence, and be given the opportunity of probing the evidence by cross examination
- the accused must be afforded the right of being defended by a lawyer of their choice
- the trial should be held before an impartial tribunal
- an Australian representative should be able to attend the judicial proceedings
- the accused must be able to understand the proceedings and have access to an interpreter if necessary.

### 6.17 Reporting trial results

Posts must update case specifics in CIS and notify Consular Operations without delay of the results of trials using the ODIN topic CONSULAR/ Arrest and Detention..

Reports should contain at least the following information:

- full name of the accused
- reference to the previous advice of arrest
- departmental file number, when known
- list of charges heard and the trial verdict on each charge
- sentence passed for each guilty verdict, indicating whether gaol sentences are to be served concurrently
- expected date of release
- any indication available (specify source) of parole date
- whether an appeal is contemplated or has been lodged;
- note of anything that the accused has specifically requested not be passed to the next of kin
- • Where an Australian is sentenced to a period of imprisonment of 12 months or more the post is to advise CAU/APO, Canberra to enable consideration to be given to cancelling their passport.

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### 6.18 Commonwealth legal financial assistance

The Attorney General's Department may provide legal financial assistance to Australians facing serious criminal charges in an overseas country pursuant to the Serious Overseas Criminal Matters Scheme for financial assistance or the Special Circumstances Scheme.

They may cover legal fees relating to the defence, and other related expenses. They will not, generally, cover the cost of any legal fees or expenses incurred before an application is made.

Assistance is only available where the accused person is at risk of being punished by:

imprisonment for 20 years or more

or

the death penalty.

Assistance will not normally be granted to people who:

- Can meet the cost of their defence without incurring serious financial difficulty
- are eligible for legal assistance in the overseas country
- do not have a continuing connection with Australia.

The applicant completes the application form to the extent relevant to overseas proceedings. The form is on the Department of the Attorney General's website at: [Special Circumstances \(Overseas\) Scheme \[Attorney-General's Department\]](#)

### 6.19 Cancelling a passport

In accordance with Section 13 of the *Australian Passports Act 2005*, where a person has been arrested for a serious foreign offence (see below), arrest reporting must include sufficient information to assist the Competent Authority (Executive Director, Australian Passport Office (ED APO), Assistant Secretary, Passport Client Services Branch, (AS PCB) or Assistant Secretary, Passport Business Improvement and Integrity Branch (AS PBB) ), to make a decision:

- to not issue (ie. refuse) a passport under s13 of the *Australian Passports Act 2005* and/or
- to cancel the detainee's current passport, if this is considered necessary or appropriate, taking into account the security of any arrangements for custody of the passport by local police/court authorities, including the likely duration of custody.

All passport cancellations and/or refusals in this category require a decision by the Minister. The CAR and ASO unit (CAU) of the APO, Canberra, decides whether the circumstances of the case meet the

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relevant criteria and, if so, will make a recommendation to the Minister on cancellation and/or refusal of the passport. CAU will enter the appropriate Passport Issuing Control System alerts and communicate directly with the post on further assistance that may be required.

A serious foreign offence is defined in the *Australian Passports Act 2005* as an offence against the law of a foreign country

- for which the maximum penalty is death or imprisonment for a period of not less than 12 months
- is specified in a Minister's Determination as a serious foreign offence, including people smuggling, terrorism, assault, child sex offences, drug trafficking and other drug-related offences
- which if committed in Australia, would be an indictable offence under the *Australian Passports Act 2005* (ie. any offence other than failure to report a lost/stolen travel document) or
- when the conduct involved, even if it does not carry a penalty under the law of the country, is required under a treaty to which Australia and the country are parties to be classified as an offence for which the surrender of persons is allowed.

Refer to the OPI for instructions on requests for replacement passports when the valid travel document is being held by a local law enforcement authority or court, or where a passport has been lost, stolen or has expired.

### **6.20 Media enquiries about arrests (See also Section C: Information and privacy, and Section D: Dealing with the media)**

The basic principles and instructions relating to privacy and dealing with the media, are in Sections C and D of the policy handbook.

### **6.21 Transfer of funds for prisoners and financial assistance to prisoners**

Transfer of funds for prisoners and prisoner loans are in Chapter 16.

### **6.22 Representations on behalf of prisoners**

Normally the Australian Government does not make formal representations on behalf of prisoners, except for Government-supported pardon applications detailed below.

Less serious matters involving the welfare of an Australian in gaol can often be resolved in the first instance by the prisoner themselves or, if this fails, by informal representations by the consular officer to the gaol authorities. The success of these representations depends largely

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on the consular officer's relationship with those authorities. These representations are informal and must remain so. If formal representations are proposed, the Department must be consulted beforehand.

When prisoners seek to move from one prison to another because of poor conditions and consular officers are satisfied that a move could assist the welfare of the prisoner, the officer may recommend that the Department make these representations to the local authorities.

Before making representations to local authorities at the request of a prisoner, consular officers should satisfy themselves, to the extent practicable, that the prisoner has discussed the relevant issues with their legal adviser.

### **6.23 Pardons**

The Australian Government may initiate or support an application for pardon lodged on behalf of Australian prisoners in overseas gaols when local law and practice allow, and when the prisoner has served a sentence equivalent to the sentence in Australia, less one year. The purpose behind the one-year reduction for the timing of pardon applications is to provide reasonable time for processing the pardon application through the local bureaucracy.

Posts that are asked by prisoners to initiate or support applications for pardon should provide the Consular Operations Branch with details of the crime and sentence. The Branch will determine, with independent advice when necessary, the length of sentence that would have been served in Australia for the same or a similar crime. This advice will determine the time when the Australian Government, through the relevant mission, may initiate or support a request for a pardon, ie. one year before the prisoner will have served the number of years that would have been served in Australia.

When there are special humanitarian considerations, the Australian Government may support or initiate requests for pardon even if the prisoner has not yet served a sentence equivalent to that in Australia where there is evidence of:

- medical evidence of severe deterioration in the prisoner's physical or mental health
- diagnosis of an incurable medical condition, with likelihood of severe deterioration in the near future.

These guidelines in are intended to be restrictive. Posts and/or prisoners should not expect them to be loosely applied.

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Fundamental principles for posts to bear in mind for applications for pardon are:

- local law and practice must permit Australian Government intervention in the pardons process
- it is for the prisoner to decide whether a pardon application will be submitted. Neither the Government nor the relevant Australian post should proceed without the full and explicit approval of the prisoner
- prisoners, or their agents, are responsible for preparing their applications. The willingness of the Government or post to submit, when appropriate, an application should not be taken to mean that preparation of the application will be undertaken by the post
- when an application is complete or close to finalisation, the post should prepare the covering papers. This might be a letter from the Head of Mission to the relevant authority, a third person note to the local Foreign Ministry, or a combination of forms of lodgement. The post should draft the covering letters/note and fax them to the Department for consideration by Consular Branch. When warranted, the Branch may contact the prisoner's family in Australia to seek additional information or input
- when an application has been lodged, the post should, from time to time, make representations to the appropriate local authorities in support of the application. In compelling circumstances, consideration could be given to making additional representations at ministerial level or in the context of bilateral officials talks. It should not, however, be assumed that these additional representations are the norm.

### 6.24 Prisoner transfer

The Attorney-General's Department is responsible for the administration of the International Transfer of Prisoners Scheme. The scheme allows prisoners serving a sentence of imprisonment in a foreign country to apply to transfer to their home country to serve the remainder of their sentence. Australia is able to undertake transfers with over sixty countries through the *Council of Europe Convention on the Transfer of Sentenced Persons* and a number of bilateral treaties, including Thailand, Vietnam, Cambodia, China and Hong Kong. A full list of participating transfer countries and detailed information on the scheme is on the [Attorney-General's Department website](#). Information specifically relating to international transfers to Australia can be found in the following link: [Transfers to Australia \(Attorney-General's Department website\)](#).

It is important to note that transfers are not automatic. Consent to the transfer must be given by the Australian Government, the government

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of the foreign country, the government of the Australian State or Territory to which the prisoner seeks to transfer, and the prisoner before the transfer can take place.

Consular officers are to be closely involved whenever the prisoner or the Attorney-General's Department seek assistance with the transfer. The level of involvement will vary from one post to another and may depend on a number of factors, including expectations of host government authorities that diplomatic missions be involved directly, and cultural or language barriers.

Consular officers may be required to assist prisoners, their families or legal representatives in obtaining basic information about the scheme, including application forms. Information and forms are available through the Attorney-General's Department website, or by contacting the International Transfer of Prisoners Unit, International Crime Cooperation Division, Attorney-General's Department.

While consular officers should provide assistance with basic information and eligibility requirements, requests for information that cannot be met by the website should be referred to the Attorney-General's Department.

- For the Attorney-General's Department to process an application for transfer, certain information must be obtained from the relevant authorities in the sentencing country. Consular officers may be requested to assist in obtaining this information. The required information includes:
  - details of the offence, conviction and sentence, including a statement of facts, court reports and judge's remarks on sentencing (when available)
  - reports on the applicant's imprisonment, including details of security classification, issues in management of the prisoner, behavioural and educational courses undertaken (when available)
  - reports on the prisoner's medical status (if requested by the Attorney-General's Department).
- When documents are not in English, consular officers should provide advice and assistance to the Attorney-General's Department on translation, including arranging translation in the sentencing country when this is the most efficient and cost-effective approach.
- Consular officers may be requested to provide advice and assistance to the Attorney-General's Department on aspects of the transfer process, such as:
  - ensuring that prisoners have current international transfer of prisoner application forms (from the website), and that they are correctly completed

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- ensuring correspondence sent by the Attorney-General's Department is received by the prisoner, and that prisoner correspondence is received by the Department
- keeping prisoners informed of the status of applications, based on advice from the Attorney-General's Department
- terms and conditions of transfer, including how the sentence will be enforced in Australia
- facilitating referral of the request for transfer to authorities of the sentencing country
- travel arrangements for escort officers and the prisoner
- liaising with authorities on arrangements for the physical hand-over of the prisoner to escort officers, including protocols for escort officers
- any requests for further information and follow ups by the Attorney-General's Department, the sentencing country of the prisoner, their family or legal representatives.

In order to progress an international prisoner transfer, a prisoner's application needs to include a signed (and witnessed) Form G: Collection, use and disclosure of personal information Form. Form G also allows prisoners to nominate individuals to whom the Attorney-General's Department can disclose their personal information including information about the progress of their application for transfer. Consular officers should consult with the Attorney-General's Department and exercise care before disclosing personal information in response to any query so as not to breach privacy principles.

### **6.25 Advice to the Department of impending release of prisoner**

When a prisoner is nearing release, the post should advise Consular Operations in good time of the nature of any assistance the prisoner may require on return to Australia. If necessary, the Department will consult organisations to ascertain what assistance can be provided and advise the post. This advice will include contact names and addresses. However, it is usually up to the prisoner to apply directly to the organisation for assistance. Prisoners should make their own arrangements for air tickets and travel funds, but often their situation requires some consular assistance.

Reporting should highlight whether the prisoner will be deported directly from custody or if they will be the subject of parole conditions. Either scenario will have a bearing on the type of travel document is issued. Guidance should be sought from the APO (CAU or POS).

### **6.26 Pre-release counselling**

All Australian states have programs for the support and reintegration into society of prisoners released from Australian gaols. These include:

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- accommodation and meals
- counselling services and assistance in finding work, including special assistance through the Australian Government's work assistance programs.

Prisoner aid organisations in each capital city offering these programs are in 6.27.

Organisations with which the Department has been in touch have indicated their willingness to extend assistance to ex-prisoners returning to Australia from overseas. The extent of assistance may vary from time to time in the light of current resources.

### **6.27 Services offered by prisoners' aid organisations**

Assistance to prisoners, ex-prisoners and their dependants may be obtained from the following specialised agencies. Some areas may have a number of agencies offering similar assistance. When there is no listing for a state or territory, it may be possible to locate an agency by referring to either the community listings at the beginning of the local telephone directory or in the local White Pages directory under 'prisoner aid'.

#### **ACT**

- Prisoners Aid (ACT)  
GPO BOX 112  
Canberra ACT 2601
- Tel: +61 2 6257 4866
- Email: [info@prisonersaid.org.au](mailto:info@prisonersaid.org.au)

#### **NSW**

- Community Restorative Centre Inc  
174 Broadway (Cnr Shepherd Street)  
(PO Box 91)  
Broadway NSW 2007
- Tel: +61 2 9288 8700
- Fax: +61 2 9211 6518
- Website: [www.crcnsw.org.au](http://www.crcnsw.org.au)

#### **Northern Territory**

- Darwin Prisoners Aid Association  
60 Boulter Road  
Berrimah NT 0828
- Tel: +61 8 8922 3777
- Fax: +61 8 8922 4832

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- Offenders Aid and Rehabilitation Services of N.T  
PO BOX 1028  
Parap NT 0804
- Tel: +61 8 8981 0487
- Fax: +61 8 8981 1727
- Email: [bill.somerville@oarsnt.org.au](mailto:bill.somerville@oarsnt.org.au)

### Queensland

- Prison Fellowship Australia  
PO Box 3310  
Norman Park QLD 4170
- Ph: +61 7 3399 3190
- Email: [qld.office@prisonfellowship.org.au](mailto:qld.office@prisonfellowship.org.au)
- Website: [http://prisonfellowship.org.au/homepage\\_54\\_4.html](http://prisonfellowship.org.au/homepage_54_4.html)
- Australian Community Safety & Research Organisation Inc  
PO BOX 440  
Lutwyche QLD 4030
- Tel: +61 7 3262 6001
- Fax: +61 7 3257 0227
- Email: [acro@uq.net.au](mailto:acro@uq.net.au)

### South Australia

- Offenders Aid and Rehabilitation Services of S.A., Inc.  
234 Sturt Street  
Adelaide SA 5000
- Tel: +61 8 8218 0700
- Fax: +61 8 8212 5515
- Website: [www.oars.org.au](http://www.oars.org.au)
- Email: [oars@oars.org.au](mailto:oars@oars.org.au)

### Tasmania

- Tasmania Association of Prisoner Support Service Inc (TAPSS)  
PO BOX147  
Glenorchy TAS 7010
- Tel: +61 3 6225 5042
- Email: [tapssinc@bigpond.com](mailto:tapssinc@bigpond.com)

### Victoria

- Victorian Association for the Care and Resettlement of Offenders (VACRO)  
Level 1, 116 Hardware St  
Melbourne VIC 3000
- Tel: 1800 049 871

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- Fax: +61 3 9602 2355
- Email: [infor@vacro.org.au](mailto:infor@vacro.org.au)
- Website: [www.vacro.org.au](http://www.vacro.org.au)

### Western Australia

- Outcare Inc  
27 Moore St  
East Perth WA 6004
- Tel: +61 8 6323 8622
- Fax: +61 8 6323 8611
- Email: [outcare@outcare.com.au](mailto:outcare@outcare.com.au)
- Website: [www.outcare.com.au](http://www.outcare.com.au)