



Australian Government

Department of Foreign Affairs and Trade

Arrested or jailed overseas

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A must see destination.

Being detained or jailed overseas or having one of your relatives or friends arrested and in prison overseas, can be very traumatic, distressing and frightening. Legal and administrative processes may be substantially different from those in Australia and slow by our standards. Prison conditions in many countries can be significantly harsher than those in Australia, contributing to the hardship faced by prisoners and their families. If you are arrested overseas, you may face a significant period of detention before your case comes to trial. Consular staff in the Department of Foreign Affairs and Trade (DFAT) will do their best to help prisoners and their families as much as possible within the local legal and international framework.

The Vienna Convention on Consular Relations (untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf), which many countries – but not all – are a signatory to, provides the framework upon which a person who has been arrested, detained or jailed overseas is entitled to seek access to consular officers from their country of citizenship. Should you be detained overseas, you should ask to speak to officials from the closest Australian mission (embassy, high commission or consulate) or, outside of usual business hours, phone DFAT's **Consular Emergency Centre** in Canberra on **+61 2 6261 3305**.

IN BRIEF

A consular officer CAN

- Visit you while you are detained.
- Assist you in obtaining information about visitor procedures or accessing money or telephones.
- Provide you with a list of local English-speaking lawyers.
- As authorised by you under provision of the *Privacy Act 1988*, arrange for your next-of-kin to be contacted and informed of your welfare.
- Assist you to organise your family and friends to send you money.
- Assist you to maintain contact with your family.
- Discuss justified and serious complaints about ill-treatment or discrimination with the local authorities.
- Raise medical or dental issues with local authorities, should you fail in your attempts to have these issues addressed.
- Arrange a small loan from the Australian Government under the Prisoner Loan Scheme (subject to your location and strict eligibility criteria).
- Monitor your court trials, and in some circumstances, attend as an observer.

- Where applicable, provide you with information on the International Transfer of Prisoners Scheme.
- Support an application for a pardon, if local law and practice allow.

A consular officer CANNOT

- Get you out of jail, or give local authorities any written guarantee to secure your release.
- Determine your innocence or otherwise.
- Conduct investigations relating to any alleged offence.
- Provide you or your family with legal advice.
- Make recommendations as to which lawyer you should choose.
- Pay your lawyer's fees, instigate court or interfere in local judicial procedures.
- Seek better treatment for you than that provided to the host country's own citizens or other nationals.
- Arrange your bail or fines.
- Support you financially in prison except in some circumstances where the country and your circumstances qualify you to seek access to a fully repayable prisoner loan.

HELP BY AUSTRALIAN CONSULAR OFFICIALS

Many Australians have found that overseas laws and legal processes can be very different to those in Australia and that harsh penalties can apply to actions that may not be considered a crime in Australia. Australian consular officers can take no position on the harshness or otherwise of local laws. While you are in another country, you are required to respect and abide by that country's laws as you are required to respect and abide by Australian laws when you are home. Legal processes in some countries can take much longer than for similar legal processes in Australia.

To provide you with consular assistance, DFAT collects information regarding the overseas arrest or detention of Australian citizens. Subject to the restrictions of the *Privacy Act 1988* and Australian laws, DFAT may be required to pass this information to Australian law enforcement agencies.

Consular visits

If you are an Australian detained overseas and request consular assistance, an Australian consular officer will visit you as soon as possible after notification of your detention and upon receiving permission by the local

authorities. The timing of this visit may be affected by variables including 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 are detained, consular officers will seek to ensure that:

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

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

Consular officers will attempt to maintain contact with you throughout your period of detention, and should you be sentenced, your jail term. The frequency of their contact will depend on factors such as the

location of the prison, the length of sentence, and the consular officer being able to obtain the necessary approvals from the local authorities.

You may request that meetings with your consular officer are held in private and out of the hearing of police or prison officials. This, however, will be at the discretion of local authorities.

Legal assistance

The Australian consular officer's role is to provide Australians detained overseas with sufficient information to obtain and retain legal advice. 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 to maintain close interest in your case.

In consultation with your legal representative consular officers can provide **general** information about the local legal system. The information may include details on legal aid if available and prosecution, remand, bail and appeal procedures, so you have a better understanding about what is happening or may happen to you. A consular officer may also attend

some of your hearings as an observer. However, 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.

Financial assistance

As a general rule the Australian Government will not pay your overseas legal fees. While you are detained, a consular officer can contact other people to arrange for you to receive funds from your family or friends to pay for lawyers or items (such as phone cards or stamps) you may need to purchase. Irrespective of where you are, Australians are not entitled to receive Medicare benefits while in prison overseas.

Special Circumstances (Overseas) Scheme

If you cannot afford your own defence and a public defender is not provided by the host Government, you may apply to the Commonwealth Attorney-General's Department under the Special Circumstances (Overseas) Scheme for financial assistance to cover overseas legal costs and related expenses. Assistance under this Scheme is provided only in the most exceptional circumstances, usually if you are facing a lengthy period of imprisonment or the death penalty.

In the absence of special circumstances that fit within the scope of the Scheme, 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. The Scheme is not intended to be used to enable you to hire a private lawyer in place of an overseas court-appointed lawyer or public defender. As one of the Scheme's criteria is the extent of the applicant's connection with Australia, financial assistance usually is not available under the Scheme for Australians who have left Australia to settle overseas.

How to apply

If you wish to apply for financial assistance for legal fees you will need to complete the form entitled *Application for assistance by the Commonwealth for legal and related expenses for schemes administered by the Attorney-General* which is available on the **Attorney-General's Department's** website ([www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_SpecialCircumstances\(Overseas\)Program](http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_SpecialCircumstances(Overseas)Program)).

Further information on the Scheme is also available from the **Attorney-General's Department** on **02 6250 6770** (within Australia) or **+61 2 6250 6770** (outside Australia) during business hours.

In many countries Australian prisoners are able, with the cooperation of prison authorities, to operate commercial bank accounts to receive funds from family and friends. If this is possible, your consular officer should be able to assist you with setting up the account or making other arrangements so that money provided by your family or friends reaches you. If prisoners are unable to operate commercial bank accounts, consular officers can assist by providing your family or friend 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's account.

Prisoner Loan Scheme

In some instances a consular officer may be able to arrange a loan for you from the Australian Government under the Australian Government's 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 are unable to organise for a loan to be provided from family or friends
- the country where you are imprisoned is on the approved country schedule.

Loans cannot be provided to cover your legal costs or bail.

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 have incurred a debt for a loan from the Australian Government while in prison.

Family liaison

While you are 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 directly liaise with your appointed legal representative in order for them to obtain information first-hand about your case.

If you are not able to make contact with your family, consular officers may be able to help. Consular officers can often be a key link between you and your family and friends. Under the *Privacy Act 1988*, however, consular officers can only pass on information to your family if you agree. If you do not want your family to be notified, your request will be respected and the consular officer will withhold information from your family and friends.

When deciding whether you provide consent for your personal information to be passed to your family, you should consider the distress and uncertainty this refusal will cause. Unless you agree, the consular officer will not be able to confirm your welfare or situation, and if your detention receives media attention and your family contacts DFAT it can be distressing for your relatives when no information is provided. In some cases detainees may decide to release limited information.

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

YOUR WELFARE AND THE LEGAL PROCESS

Australian consular officers aim to ensure Australians arrested overseas are treated no less favourably than local citizens detained for similar offences, are subject to humanitarian standards of prisoner welfare and their basic needs are met.

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. Should you fail in your attempts to receive medical or dental treatment, consular officers may raise these concerns with prison officials. Whenever possible, prisoners should first make their complaints through the prison system and/or case manager prior to raising their concerns with consular officials.

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

- you are 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 are not receiving medical care
- your welfare is at risk.

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

While engagement by the Australian Government demonstrates the Government is closely monitoring the case, and expects procedural fairness, there can

be no guarantee that our actions will achieve your desired outcome or that the local government will listen to our representations.

HEALTH CONCERNS

If you have health issues, it is your responsibility to discuss these in the first instance with the prison authorities and ask to see the prison doctor or dentist. If you are worried about your health, for example if you are HIV-positive, 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 what actions you have taken and seek their advice and support.

DUAL NATIONALITY

The Australian Government seeks to extend to all its citizens, including dual nationals, the full range of consular assistance. However, under international law, countries are not obliged to recognise dual nationality.

A country may not permit Australian consular assistance to be given to Australian citizens who, according to its own laws, it considers and treats as its own citizen. Or, a person might not be regarded as being an Australian if that person was not travelling on their Australian passport, which may also limit the

Australian Government's ability to provide consular assistance.

While consular officers will try to assist as much as possible, the extent to which we are able to help is determined by the host government.

If you are a dual national and arrested in a country that does not recognise dual nationality, the extent to which Australian consular officers might be able to help you could be limited. Host governments may not allow consular officers to provide consular assistance. They may deny consular visits and may not divulge information relevant to your case. In such cases the Australian Government will register its view with the local government that all Australian citizens are entitled to receive consular assistance, however there is no guarantee that local authorities will listen to our representations.

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 jail. A transfer may assist your rehabilitation by removing language and cultural

barriers, providing access to custodial programs and facilitating contact with family and friends.

If you receive a lengthy prison sentence overseas and all appeal avenues have been exhausted, you may wish to ask your consular officer whether there is any possibility your sentence could be served, in part, within Australia. While there are no guarantees on the outcome, consular officers will assist you to the maximum extent possible.

When can a prisoner be transferred to Australia?

You may be able to transfer back to Australia if:

- you are 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 are imprisoned in a country with which Australia has a transfer agreement. Australia is currently able to undertake transfer with Thailand and Hong Kong, 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 from your consular officer or from the **Attorney-General's Department's** website (www.ag.gov.au)

- the terms of transfer have been agreed to by the Australian Government, the government of the country in which you are 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 is based is subject to appeal
- the offence for which you are 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 are held in is covered by an agreement
- provide further information on eligibility requirements and conditions for transfer. Further information is also available on the **Attorney-General's Department's** website (www.ag.gov.au) or by emailing itp@ag.gov.au
- give you an application form
- keep you updated on the progress of your application.

PARDONS

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

The Australian Government may, however, if asked, 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. The reason why there is the one year reduction is to provide time for the local authorities to process the pardon application.

The granting of a pardon is entirely a matter for the authorities of the country in which the person has been imprisoned. Ask your consular officer for more details.

ADAPTING TO LIFE IN PRISON OVERSEAS

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

occupied. Prison conditions and management vary from 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 are imprisoned in a country where English is not widely spoken) – this will help to improve your quality of life in prison as you will be able to communicate with fellow prisoners and prison guards
- how many letters you are allowed to send. Sometimes remand prisoners can send more letters which will give you a greater opportunity to get your affairs in order
- if and how often you are able to make telephone calls
- if there is an opportunity to undertake study, or if you are permitted to arrange to study through an external educational institution
- if it is possible to work inside the prison, whether working is compulsory or not, 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 your consular officer.

PASSPORT CANCELLATION AND / 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 are the subject of an arrest warrant issued in a foreign country in respect of a serious foreign offence, or if you are 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 pending the outcome of all legal proceedings in a foreign country in relation to a serious offence(s).

The cancellation or refusal of your Australian passport in these circumstances, however, does not affect your status as an Australian citizen or your rights to Australian consular assistance as explained in this brochure.

RETURNING TO AUSTRALIA

On return to Australia, DFAT consular officers can provide you with the contact names and numbers of prison support organisations in your state or territory. These organisations can assist you to re-establish your life in Australia.

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. We suggest you contact DFAT directly as our Canberra office has the overall responsibility for consular case management.

Department of Foreign Affairs and Trade
Attn: Consular Operations Branch
R. G. 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 DFAT can help you and you can contact us at any time, our primary client is the person who has been detained. If the person detained does not wish us to convey information, the *Privacy Act 1988* prohibits us from passing on their personal information to you or anyone else. However, subject to the restrictions of the *Privacy Act 1988* and Australian laws, DFAT may be required to pass this information to Australian law enforcement agencies.

If you would like to visit your family member detained overseas, you should contact the Consular Operations Branch 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.


WHERE TO GET HELP?

Consular officers can be found in Australian diplomatic and consular posts overseas. DFAT's consular network extends to some 170 points of service around the world.

Address and telephone numbers of Australian embassies, high commissions and consulates can be found in local telephone directories, hotels, tourist offices or police stations in the country concerned.

A directory of Australian missions and Canadian posts that assist Australians appear in *Travel Smart: hints for Australian travellers* booklet. This booklet is issued with your passport. To obtain and/or download a copy, go to smartraveller.gov.au/hints/index.html.

The 24-hour Consular Emergency Centre (CEC) 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).

A background image showing a close-up of two hands shaking, symbolizing agreement or support. The image is in grayscale and has a soft, faded appearance. The hands are positioned in the center-right of the page, with the fingers interlaced. The background is a light gray with a subtle texture.

While every care has been taken in preparing this brochure, neither the Australian Government nor its agents or employees, including any member of Australia's diplomatic and consular staff abroad, can accept liability for any injury, loss or damage arising in respect of any statement contained therein.

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Information for travellers and travel advisories are available from the Department of Foreign Affairs and Trade's smartraveller website: **smartraveller.gov.au**

October 2008