

ARRESTED OR JAILED OVERSEAS

Arrested or detained overseas

When you are overseas, local laws and penalties, including ones that may appear harsh by Australian standards, apply to you. Some countries impose tough penalties including corporal punishment, life imprisonment and the death penalty.

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.

The information below will help you understand what consular staff in Australia and overseas can do to assist prisoners and their families during this difficult time.

Being arrested or detained overseas

If you are arrested or detained overseas, you have the right to contact the Australian Government. Consular assistance cannot override local law, even when local laws appear harsh by Australian standards.

The Australian Government cannot get you out of prison.

You may face a significant period of detention before your case comes to trial. Legal and administrative processes and prison conditions vary from country to country, and may be substantially different from those in Australia. If you are sentenced to a prison term you will generally be expected to serve your sentence in the country in which you are detained.

The Australian Government will do what it can to help prisoners and their families as much as possible within the local and international legal framework. However, there may be limitations to what can be done and you should have realistic expectations about the Australian Government's ability to resolve any difficulties you may face.

We recommend that you read the [Consular Services Charter](#), which sets out the standard of services all Australians can expect to receive from consular officers, including what help we may provide and what we cannot do. It is available at *smartraveller.gov.au*. You can ask a consular officer to provide you with a copy.

How we assist you

The Department of Foreign Affairs and Trade (DFAT) provides assistance to Australians who find themselves in trouble overseas. This support is referred to as consular assistance.

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What we may do to assist

We will do everything in our power to assist Australians who are arrested or in prison overseas, but we must also work within the legal and administrative processes that apply in the country of arrest or imprisonment.

We may:

- visit you while you're detained
- assist you in getting information about visitor procedures or accessing money or telephones
- provide you with a list of local English-speaking lawyers
- if authorised, arrange for your family or friends to be contacted and informed of your welfare
- provide information to your family and friends to enable them to send you money
- 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
- where applicable, provide you with information on the International Transfer of Prisoners Scheme administered by the Attorney-General's Department.

What we cannot do

We cannot:

- get you out of jail, or give local authorities written guarantees to secure your release
- determine your innocence or otherwise
- conduct investigations
- provide you or your family with legal advice
- make recommendations as to which lawyer you should choose
- pay your lawyer's fees, instigate court procedures or interfere in local judicial processes
- seek better treatment for you than that provided to the foreign country's own citizens or other nationals
- arrange your bail or pay your fines
- provide interpreter and/or translation services

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Getting help overseas

Consular access

Many countries, including Australia, have signed the [Vienna Convention on Consular Relations](#). This Convention provides the framework that entitles a person who has been arrested, detained or jailed overseas 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 nearest Australian mission.

Dual nationality

Under international law, countries are not obliged to recognise dual nationality. If you are a dual national and are in your country of other nationality, assistance may only be provided in exceptional circumstances.

In addition, a country may not permit Australian consular assistance to be provided to an Australian citizen who, according to its own laws, it considers and treats as its own citizen. A foreign country might also not regard you as being Australian if you were not travelling on your Australian passport. Consular access may be denied and information relevant to your case may not be divulged.

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's no guarantee that local authorities will make any allowances as a result of these representations.

Consular contact

If you're an Australian detained overseas and you request consular assistance, an Australian consular officer will contact you as soon as possible after notification of your detention.

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.

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

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

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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 contact will depend on factors such as your wishes, the location of the prison, length of the sentence, and the availability of other local support.

Contact details

Addresses and telephone numbers of Australian embassies, high commissions and consulates can be found on the [Department of Foreign Affairs and Trade website](https://dfat.gov.au/missions) (dfat.gov.au/missions).

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](https://dfat.gov.au) (dfat.gov.au).

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).

Your welfare

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.

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

- you're receiving less favourable treatment than 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 local prisoners in the country of your arrest)
- you're not receiving medical care.

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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. 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.

If you believe your concerns have not been dealt with by prison authorities, advise your consular officer and seek their advice and support.

Family liaison

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.

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.

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).

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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 and, subject to privacy considerations, details of the prisoner's legal representative and information about court proceedings.

Adapting to life in prison overseas

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 different prison environments.

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 participate in any sporting or creative activities
- 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.

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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.

Legal information

Seeking legal advice

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

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.

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

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.

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When can a prisoner be transferred to Australia?

You may be able to transfer back to Australia if:

- 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 the [Attorney-General's Department website](http://ag.gov.au) (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 c or by emailing the Attorney-General's Department on itp@ag.gov.au
- keep you updated on the progress of your application.

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

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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.

Possible financial assistance

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 advise you on setting up the account or making other arrangements for you to receive funds from your family 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.

Financial assistance from the government

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

Scheme for Overseas Criminal Matters involving the Death Penalty

The Attorney-General's Department administers the Scheme for Overseas Criminal Matters involving the Death Penalty. Assistance under this scheme is only available to you if you are facing a criminal charge/s punishable by 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

The Attorney-General's Department administers the Special Circumstances Scheme.

Circumstances where assistance may be available under this Scheme for overseas applicants include:

- where an individual – who has a continuing connection with Australia – is being, or will be, prosecuted for a criminal offence overseas for which the individual may be punished by a term of imprisonment equal to or longer than 20 years, and the Attorney-General is satisfied that the exceptional circumstances of the case justify the provision of financial assistance by the Commonwealth; and
- where no other scheme of legal financial assistance applies, but the Attorney-General considers that there is a moral obligation on the Commonwealth to make a grant.
 - 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](http://ag.gov.au) (ag.gov.au). 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.

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Release

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 may be able to 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](http://humanservices.gov.au) (humanservices.gov.au). 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 seven (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:

- *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.

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While every care has been taken in preparing this information, 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 herein.

Consular Operations Branch
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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.

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