

**No. 49348**

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**Australia  
and  
India**

**Treaty between Australia and the Republic of India on mutual legal assistance in criminal matters. Canberra, 23 June 2008**

**Entry into force:** *20 January 2011 by notification, in accordance with article 23*

**Authentic texts:** *English and Hindi*

**Registration with the Secretariat of the United Nations:** *Australia, 28 February 2012*

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**Australie  
et  
Inde**

**Traité d'entraide judiciaire en matière pénale entre l'Australie et la République de l'Inde. Canberra, 23 juin 2008**

**Entrée en vigueur :** *20 janvier 2011 par notification, conformément à l'article 23*

**Textes authentiques :** *anglais et hindi*

**Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies :** *Australie, 28 février 2012*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF INDIA  
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Australia and the Republic of India (hereinafter referred to as the 'Contracting States');

Desiring to make more effective the cooperation between the two countries in combating crimes, including offences related to terrorism, through mutual legal assistance;

Have agreed as follows:

**ARTICLE 1  
SCOPE OF APPLICATION**

1. The Contracting States shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or other proceedings in criminal matters in the Requesting State, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.

**ARTICLE 2  
DEFINITIONS**

For the purpose of this Treaty-

1. Criminal matters means investigations, inquiries, trials or other proceedings relating to statutory or common law offences, including those relating to forfeiture, confiscation and restraint of property and imposition of pecuniary penalties, in respect of such an offence.
2. Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs, foreign exchange and other revenue matters.
3. Mutual legal assistance includes:-

- (a) taking of evidence and obtaining of statements of persons including the execution of letters rogatory;
  - (b) provision of information, documents and other records;
  - (c) location and identification of persons and objects;
  - (d) execution of requests for search and seizure;
  - (e) measures to locate, restrain and forfeit the proceeds and instruments of crime;
  - (f) seeking the consent of persons to be available to give evidence or to assist in investigations in the Requesting State and, where such persons are in custody, arranging for their temporary transfer to that State;
  - (g) service of documents, including judicial documents; and
  - (h) other assistance consistent with the objects of this Treaty which is not inconsistent with the laws of the Requested State.
4. Mutual legal assistance shall not include:-
- (a) the extradition of any person;
  - (b) the execution in the Requested State of criminal judgments imposed in the Requesting State except to the extent permitted by the law of the Requested State and this Treaty; and
  - (c) the transfer of persons in custody to serve sentences.

### ARTICLE 3 COMPATIBILITY WITH OTHER TREATIES

This Treaty shall not derogate from obligations subsisting between the Contracting States whether pursuant to other Treaties or arrangements or otherwise nor prevent the Contracting States providing assistance to each other pursuant to other treaties or arrangements or otherwise.

ARTICLE 4  
CENTRAL AUTHORITIES

1. The Central Authorities shall transmit and receive all requests for the purposes of this Treaty.
2. The Central Authority for Australia is the Attorney-General's Department and for the Republic of India is the Ministry of Home Affairs. Either Contracting State shall notify the other of any change of its Central Authority.
3. The Central Authorities shall arrange for the prompt execution of such requests. The Central Authorities may communicate with one another for the purposes of this Treaty.

ARTICLE 5  
REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance shall be refused if the request relates to the prosecution of a person for a military offence, which is not also an offence under the general criminal law.
2. Assistance may be refused if the request relates to the prosecution of a person for an offence that is regarded by the Requested State as an offence of a political character. For the purposes of this Treaty the following offences shall not be regarded as offences of a political character:
  - (a) an offence in respect of which the Contracting States have an obligation to provide mutual legal assistance under a multilateral/international treaty or convention to which both Contracting States are parties;
  - (b) an offence in respect of the taking or attempted taking of the life of a Head of State, Head of Government, or a member of that person's family;
  - (c) murder, culpable homicide or manslaughter;
  - (d) an offence involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;

- (e) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character; or
  - (f) conspiracy or attempt to commit, or participation in any of the foregoing offences.
3. Assistance may be refused if:
- (a) the request relates to the prosecution of a person for an offence in respect of which the person has been tried and finally dealt with or pardoned;
  - (b) the Requested State has substantial grounds to believe that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality or political opinion or that person's position may be prejudiced for any of those reasons;
  - (c) in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, essential public interest or prejudice the safety of any person; or
  - (d) the request relates to the prosecution of a person for an offence in respect of which the punishment which might be imposed on the person may prevent the Requested State from complying under its domestic laws.
4. The Requested State may consider granting assistance in the absence of dual criminality.
5. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation, prosecution or other proceedings in the Requested State.
6. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.