

**STEP-BY-STEP GUIDE FOR ASSET RECOVERY**  
**FROM G20 COUNTRIES**

**AUSTRALIA**

**I. INTRODUCTION**

Australian authorities can take action to register foreign restraining, forfeiture or pecuniary penalty orders under the *Mutual Assistance in Criminal Matters Act 1987* (Cth) (MACMA), seek time-limited domestic restraining orders pending receipt of a foreign restraining order, or, in certain circumstances, consider domestic action under the *Proceeds of Crime Act 2002* (Cth) (POCA). Australia can register both conviction-based and non-conviction-based proceeds of crime (POC) orders directed against both persons and assets received from any country provided the appropriate legal thresholds are met, including that the order is made in respect of an offence which carries a maximum penalty of death, imprisonment for a period exceeding 12 months, or a fine exceeding A\$51,000. There are a range of tools under the MACMA to identify, locate and trace the proceeds of crime located in Australia. Australia would generally only take POC action on receipt of a formal mutual assistance request (MAR) but can provide investigative assistance on an agency-to-agency basis and, in limited circumstances, domestic POC action on behalf of a foreign country might be considered in the absence of a MAR and foreign POC order. Australian laws can be accessed at: <http://www.comlaw.gov.au/>.

**II. HOW TO SEEK RESTRAINT, SEIZURE AND FORFEITURE/CONFISCATION FROM AUSTRALIA**

While Australia has various options available to take action against property in Australia that is reasonably believed to be proceeds of crime, Australia's preference is to register a foreign country's POC order in an Australian court. The steps in the following guide are based on a foreign country asking Australia to register a foreign POC order.

Australia encourages foreign countries considering POC action against property located in Australia to make early contact with Australia's International Crime Cooperation Central Authority (ICCCA). ICCCA is Australia's central authority for mutual assistance and can provide guidance on the most appropriate form of action available under Australia's POC regime to give effect to the foreign country's request. ICCCA can also provide advice on what information will be relevant to ensure that the order can be registered, including whether the order is in a form that can be registered in an Australian court. ICCCA can be contacted at <[mutual.assistance@ag.gov.au](mailto:mutual.assistance@ag.gov.au)>.

1. Foreign country identifies property located in Australia that is capable of being restrained and forfeited as either the proceeds or instruments of crime.  
[NOTE: If necessary, investigative assistance for assets located in Australia (identification, quantification, etc.) may be provided on either a police-to-police basis or via formal MAR in advance of any action to obtain or register a foreign POC order. An MAR is required to exercise coercive action (e.g. obtaining production orders, search warrants or monitoring orders).]  
[NOTE: In certain circumstances (for example, where there is a high risk that assets may be dissipated before a foreign POC order can be obtained) Australia can obtain a temporary, 30 day, restraining order. A request for a temporary restraining order must still be made via MAR and must provide reasonable grounds to believe that property in Australia may be made or is about to be made the subject of a foreign order].

2. Foreign country obtains a foreign POC order freezing/seizing/restraining the identified assets.
3. Foreign country makes an MAR to Australia, attaching the foreign POC order, and requesting that Australia give effect to the foreign POC order.
4. Australia seeks ministerial authorisation to apply to an Australian court to register the foreign POC order.

[NOTE: Once a foreign POC order is registered in an Australian court, it has effect as though it is an Australian order. The provisions of Australia's POCA apply to foreign orders registered in Australia, including dealing with the property.

## 1. IDENTIFICATION OF THE ASSETS

To recover the proceeds of crime (including proceeds of corruption) located in Australia, first identify the suspect and all related entities through which he/she may hold, or exercises effective control over, property including financial institutions, companies, businesses, trusts and family members. If you are seeking assistance to identify assets in Australia that may be subject to restraint and forfeiture, the following mechanisms are available:

- Mutual assistance request — Australia requires a mutual assistance request to exercise coercive action on behalf of a foreign country including production orders, search warrants or monitoring orders; providing lawfully obtained telecommunications interception information and stored communications information and using surveillance devices on behalf of a foreign country. Detailed information about making a mutual assistance request to Australia is available in the G20 Country Guide to Mutual Legal Assistance but in general, the steps outlined below should be followed:
  - Step 1: Consult with the central authority before submitting the request
  - Step 2: Indicate the basis on which the request is made
  - Step 3: Identify the authority conducting the investigation / prosecution
  - Step 4: Summarise the case
  - Step 5: Set out the applicable legal provisions
  - Step 6: Specify the assistance being sought
  - Step 7: Highlight any specific confidentiality requirements
  - Step 8: Identify any urgency in the execution of the request
  - Step 9: Provide a list of relevant contact points in your country
  - Step 10: Translate the request into English
- Police-to-police assistance — The Australian Federal Police (AFP) can undertake a range of specific tasks to identify assets including investigations into property ownership (i.e. land/vehicles/vessels/aircraft and other valuable chattels), corporate checks, financial intelligence, revenue enquiries and obtaining criminal records/intelligence which may support the original request. Police-to-police enquiries focus on open source databases (corporate checks, some financial checks, land titles registers, etc.) and restricted law enforcement databases (i.e. financial intelligence and criminal history checks).

## 2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

Australia can assist foreign countries to recover assets pursuant to a formal MAR or, in limited circumstances, via domestic POC action.

All mutual assistance requests are considered in accordance with the MACMA and any relevant bilateral or multilateral treaty. Information about the grounds for refusal of assistance under the MACMA is set out at section 8 of the MACMA.

## Mutual Assistance Request

### *Conviction-based action*

To restrain assets located in Australia pursuant to a foreign restraining order based on a **foreign conviction**:

1. an MAR requesting enforcement of a foreign restraining order must have been received
2. the relevant property must reasonably be suspected of being located in Australia, and
3. the foreign restraining order must have been made in respect of a foreign serious offence for which a person has been convicted or charged. A foreign serious offence means an offence against the law of a foreign country the maximum penalty for which is death, imprisonment for a period exceeding 12 months or a fine exceeding A\$51,000.

To confiscate assets located in Australia pursuant to a foreign pecuniary penalty order or a foreign forfeiture order based on a **foreign conviction**:

1. Australia requires an MAR from a foreign country requesting enforcement of a foreign forfeiture order or foreign pecuniary penalty order
2. the foreign order must be made in respect of a foreign serious offence (defined above)
3. the foreign order must be made against property that is reasonably suspected of being located in Australia (for a forfeiture order) or some or all of the property available to satisfy the order must be reasonably suspected of being located in Australia (for a pecuniary penalty order)
4. the Attorney-General must be satisfied that a person has been convicted of the relevant offence, and
5. the Attorney-General must be satisfied that the conviction and the POC order are not subject to further appeal in the foreign country.

### *Non conviction-based action*

To restrain assets located in Australia pursuant to a foreign restraining order based on a **suspicion/belief** that a person has committed a **foreign serious offence**:

1. an MAR requesting enforcement of a foreign restraining order must have been received
2. the relevant property must reasonably be suspected of being located in Australia, and
3. the foreign restraining order must have been made in respect of the alleged commission of a foreign serious offence (whether or not the identity of the person who committed the offence is known) (see paragraph 34(3)(b) MACMA).

[NOTE: As with conviction-based restraint, in certain circumstances, Australia can obtain a time-limited (generally 30 days) restraining order where a foreign country makes a request for POC action but has not yet obtained a foreign restraining order (section 34J MACMA).

To confiscate assets located in Australia pursuant to a foreign pecuniary penalty order or a foreign forfeiture order based on a **suspicion/belief** that a person has committed a **foreign serious offence**:

For foreign forfeiture orders

1. an MAR requesting enforcement of a foreign forfeiture order is made to Australia
2. the foreign forfeiture order has the effect of forfeiting a person's property on the basis that the property is, or is alleged to be, the proceeds or an instrument of a foreign serious offence (whether or not a person has been convicted of that offence), and
3. the foreign forfeiture order is made against property that is reasonably suspected of being located in Australia (see subsection 34(2) MACMA).

For foreign pecuniary penalty orders

1. an MAR requesting enforcement of a foreign pecuniary penalty order is made to Australia
2. the pecuniary penalty order has the effect of requiring a person to pay an amount of money on the basis that the money is, or is alleged to be, the benefit derived from a foreign serious offence (whether or not the person has been convicted of that offence)
3. some or all of the property available to satisfy the order is reasonably suspected of being located in Australia.

Domestic action under the POCA

In limited circumstances, Australia may consider taking domestic action on behalf of a foreign country under the POCA. This action can take place in the absence of a foreign POC order and an MAR may not be required. Domestic action can be initiated on both a conviction and non-conviction based basis.

Under the POCA, subject to satisfying the relevant evidentiary requirements, an authorised officer can apply for a freezing order over a bank account where the account balance reflects proceeds or an instrument of a foreign indictable offence. Alternatively, a proceeds of crime authority can apply to a court for a restraining order in respect of property reasonably suspected to be the proceeds of a foreign indictable offence. A *foreign indictable offence* involves conduct that would, had the conduct occurred in Australia, have constituted an offence punishable by at least 12 months imprisonment.

If a property is restrained pursuant to domestic POC action under the POCA, then a proceeds of crime authority may apply to a court for a forfeiture order in respect of the proceeds of a foreign indictable offence, where the property to be specified in the order is covered by a restraining order under section 19 that has been in force for at least six months (section 49 POCA). If the application is uncontested (i.e. there has not been an application to exclude property from the restraining order), the court must make a forfeiture order if satisfied of certain criteria including that the proceeds of crime authority has taken reasonable steps to identify and notify persons with an interest in the property and that the property is proceeds of one or more foreign indictable offences. If the application is contested, the court must also be satisfied on the balance of probabilities that the property the subject of the order is the proceeds of a foreign indictable offence. However, the making of the forfeiture order does not require the court to find that a particular person committed any offence.

**3. DISPOSAL/RETURN OF ASSETS**

Once assets in Australia are forfeited, they are dealt with under Australian law. However, Australia's POC regime allows for the sharing of assets forfeited in response to a request by a foreign country.

Assets forfeited as a result of the registration of a foreign forfeiture order under MACMA may be dealt with in accordance with any direction of the Attorney-General, subject to the effect on third parties of the registration of the foreign forfeiture order. The Attorney-General may authorise the sharing of forfeited assets with a foreign country in this way.

Assets forfeited as a result of the enforcement of a foreign pecuniary penalty order under MACMA must be paid into the Commonwealth Confiscated Assets Account (CAA). Any assets/property forfeited as a result of a domestic forfeiture order under POCA are also paid into the CAA.

The POCA prescribes the uses to which monies paid into the CAA may put, and includes:

- making any payments to foreign countries that the Minister considers are appropriate under the “equitable sharing program”, and
- making any payments that the Minister considers necessary to satisfy Australia’s obligations in respect of a registered foreign forfeiture order or registered foreign pecuniary penalty order.

(The equitable sharing program is an arrangement under which Australia shares with a foreign country a proportion of any proceeds of any unlawful activity recovered under a federal law if, in the Minister’s opinion, the foreign country has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the unlawful activity.)

Australia has bilateral mutual legal assistance treaties with 30 countries. Those treaties generally include provisions relating to sharing of confiscated assets. Additionally, Australia has ratified a number of international conventions that have proceeds of crime and asset sharing provisions, including the *United Nations Convention Against Corruption* (UNCAC). Any request made of Australia under the UNCAC and relating to stolen State assets will be considered by Australia in accordance with the obligations of the UNCAC

### III. ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

Police-to-police assistance can be initiated through the AFP while ICCCA facilitates formal government to government assistance.

Criminal Assets Confiscation Taskforce  
Authority  
Australian Federal Police  
GPO Box 401  
Canberra ACT 2601  
Australia  
<[CACT-Canberra@afp.gov.au](mailto:CACT-Canberra@afp.gov.au)>

International Crime Cooperation Central  
Attorney-General’s Department  
3-5 National Circuit  
Barton ACT 2600  
Australia  
<[mutual.assistance@ag.gov.au](mailto:mutual.assistance@ag.gov.au)>

The Australian Federal Police (AFP) works closely with other agencies through the AFP International Network across 28 AFP International Posts and relies on the strength of police-to-police relationships to make enquiries in relation to asset tracing and potential actions against criminal proceeds. The AFP is an active member of the Camden Asset Recovery Inter-Agency Network (CARIN), the Stolen Asset Recovery Global Focal Point (SARGFP via Interpol), the Strategic Alliance Group (SAG) and the Asia Pacific Group on Money Laundering. In some instances financial intelligence necessary for tracing assets may be obtained from foreign financial intelligence units through the Egmont Group of Financial Intelligence Networks.

**[Maximum 6 Pages]**

**IV. OTHER USEFUL REFERENCES**

Requesting countries are encouraged to refer to information relating to ICCCA at:  
<http://www.ag.gov.au/Internationalrelations/Internationalcrimecooperationarrangements/MutualAssistance/Pages/default.aspx> for additional guidance on making asset recovery requests to Australia.