



Australian Government

Department of Foreign Affairs and Trade

ARRESTED OR JAILED OVERSEAS



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Each year almost 1000 Australians are arrested overseas and about 220 are in prisons overseas at any one time. 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. Prison conditions in many countries can be significantly harsher than those in Australia.

If you are arrested overseas, you may face a significant period of detention before your case comes to trial. Legal and administrative processes may be substantially different from those in Australia and slow by our standards.

This brochure is designed to provide information to help you understand what consular staff in Australia and overseas can do to assist prisoners and their families during this difficult time.

When Australians travel abroad, they leave behind Australia's support systems, emergency service capabilities and medical facilities. 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. There may be **limitations to what can be done** and you should have realistic expectations about this. It is recommended you read the Consular Services Charter, available on ***smartraveller.gov.au***, before you go.

BEFORE YOU GO – BE PREPARED

LOCAL LAWS

Familiarise yourself with 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.

Be aware that local laws and penalties, including ones that may appear harsh by Australian standards, apply to you. Some countries impose tough penalties including life imprisonment and the death penalty. Age, health concerns or ignorance are not valid excuses.

INTERNATIONAL LAWS

The Vienna Convention on Consular Relations

The Vienna Convention on Consular Relations, available at <http://treaties.un.org/> and which many countries 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 nearest Australian mission.

Addresses and telephone numbers of Australian embassies, high commissions and consulates can be found at www.dfat.gov.au/missions.

DRUGS

Do not use, carry or get involved with drugs.

Do not be fooled into thinking carrying or taking drugs overseas is worth the risk. **Australians do get caught** and every year, many Australians of all ages are arrested overseas on drug charges. Even the possession of small quantities of so-called 'soft drugs' can attract jail sentences or heavy fines.

Avoid getting into trouble with drugs overseas by:

- obeying the law – do not purchase, take or travel with drugs
- locking your bags as a precaution against tampering or theft
- not leaving your bags unattended in public areas or in the care of a stranger
- never carrying anything into or out of another country for someone else
- ensuring your medication is not considered illegal overseas by contacting the nearest foreign mission of the country you are visiting before your departure. Contact details are available from **www.dfat.gov.au/embassies.html**.

In some countries the presence of illegal drugs detected in blood or urine tests is considered possession. You may also be charged with possessing drugs if trace amounts are found on your body, bloodstream, clothes or luggage. Amounts of 0.05 grams or less can lead to a conviction for drug possession and lengthy minimum mandatory prison sentences.

BEING ARRESTED OVERSEAS

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

The Australian Government cannot get you out of jail.

WHAT WE CAN 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.

We can:

- visit you while you are 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 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.

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 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 procedures or interfere in local judicial processes
- seek better treatment for you than that provided to the host country's own citizens or other nationals
- arrange your bail or pay your fines
- support you financially in prison, except in some circumstances where the country and your circumstances qualify you for the Prisoner Loan Scheme.

HOW WE ASSIST YOU

CONSULAR SERVICES

The Department of Foreign Affairs and Trade provides assistance to Australians who find themselves in trouble overseas.

This support is referred to as consular services.

The Department of Foreign Affairs and Trade (DFAT) collects information regarding the overseas arrest or detention of Australian citizens for the purpose of providing consular assistance. 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.

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. Additionally, 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.

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 make any allowances as a result of these representations.

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 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 are 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 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 visits will depend on factors such as the location of the prison, length of the sentence, and consular officers being able to obtain the necessary approvals from the local authorities.

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

LEGAL ASSISTANCE

Australian consular officers will provide Australians detained overseas with sufficient information to 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.

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 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.

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 keep informed about your case. However, consular officers will not be able to confirm your welfare or situation with your family unless you agree.

If you are not able to make contact with your family, consular officers may be able to assist. **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 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.

OTHER POSSIBLE ASSISTANCE AVAILABLE

FINANCIAL ASSISTANCE FROM FAMILY

In many countries Australian prisoners are, with the cooperation of prison authorities, 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 or friends to pay for lawyers or items (such as phone cards or stamps) you may need to purchase. 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

As a general rule the Australian Government will not 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 are unable to organise for a loan to be provided from family or friends and
- the country where you are 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 have incurred a debt for a loan from the Australian Government while in prison.

SPECIAL CIRCUMSTANCES (OVERSEAS) SCHEME

If you are involved in legal proceedings overseas you may be eligible, in limited circumstances, to receive financial assistance from the Australian Government to help meet your overseas legal and related costs through the Special Circumstances (Overseas) Scheme.

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 and
- the availability of legal assistance in the overseas jurisdiction will usually mean you will **not** be eligible to receive financial assistance under the Scheme.

Any 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. As one of the Scheme's criteria is the extent of the applicant's connection with Australia, financial assistance is not usually available under the Scheme for Australians who have left Australia to settle overseas.

HOW TO APPLY

For further information about the Scheme contact the Attorney-General's Department on 02 6141 6666 (within Australia) or +61 2 6141 666 (outside Australia) during business hours.

If you wish to apply for financial assistance for legal fees you will need to complete the relevant form, available from the Attorney-General's Department website at **www.ag.gov.au**.

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 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 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 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 jail.

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 as much as 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 at **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 at **www.ag.gov.au** or by emailing the Attorney-General's Department on **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, 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.

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 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)
- 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, 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 does not affect your status as an Australian citizen or your rights to Australian consular assistance.

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

If you would 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

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 Service Charter* sets out the standard of services all Australians can expect to receive from consular staff, including what they can and cannot do, and is available on **smartraveller.gov.au**.

A directory of Australian overseas missions appears in the 'Getting Help Overseas' section of each edition of *Travel Smart: hints for Australian travellers*. This publication is issued with your passport and available online at **smartraveller.gov.au**. Canadian missions providing consular assistance to Australians are also listed in the *Travel Smart: hints for Australian travellers* publication.

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 cost within Australia).

COUNSELLING SERVICES

Australians overseas in need of counselling services can contact our Consular Emergency Centre on **+61 6261 3305** to be transferred to a Lifeline Telephone Counsellor.



Australian Government

Department of Foreign Affairs and Trade

- 1** Take out **travel insurance** to cover hospital treatment, medical evacuation and any activities in which you plan to participate.
- 2** Before travelling overseas **register** your travel and contact details online at ***smartraveller.gov.au*** or at the local Australian embassy, high commission or consulate once you arrive so we can contact you in an emergency.
- 3** Check the latest **travel advice** for your destination at ***smartraveller.gov.au*** before you go. **Subscribe** to receive free email notification each time the advice is updated.

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 herein.

Consular Policy Branch
Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
BARTON ACT 0221
Tel (02) 6261 3305; 1300 555 135

Information for travellers and travel advisories are available at ***smartraveller.gov.au***.

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