



# What is Mutual Assistance?

Mutual assistance is the process by which countries provide and obtain government-to-government assistance on criminal investigations

Mutual assistance is important in an increasingly interdependent world, and is especially important for serious crime where evidence, victims and criminals can be located in different jurisdictions.

The legislative amendments required to accede to the Budapest Convention would improve the mutual assistance process through the addition of two new tools: surveillance device warrants and preservation orders.

**Mutual assistance is the process countries use to provide and obtain formal government-to-government assistance in criminal investigations and prosecutions. Mutual assistance is used for a wide range of criminal matters including money-laundering, major fraud, violent offending, drug importation, child pornography and hacking.**

In New Zealand, mutual assistance is largely governed by the Mutual Assistance in Criminal Matters Act 1992 ("MACMA"). MACMA governs requests made by New Zealand to other countries and requests made by other countries to New Zealand. Common forms of assistance include:

- the identification and location of persons to give evidence or assist with investigations;
- the obtaining of evidence, documents, or other articles, frequently by search and seizure;
- the service of documents; and
- the restraint or forfeiture of property that has been obtained from significant criminal offending.

Mutual assistance is separate from police-to-police information sharing and cooperation. A degree of case-by-case information sharing is permitted under the Policing Act. Formal police-to-police information sharing mechanisms also empower cooperation by enabling police to lawfully share information, in a reciprocal way, with foreign partners and contribute to joint investigations of international crime.

## Why do we need mutual assistance?

Crime transcends national borders, especially in a technologically connected environment.

The mobility of criminals and the international effects of their activities require a united international response. New Zealand needs to ensure that criminals cannot evade prosecution and confiscation action just because the evidence or proceeds of their crime are in different countries.

### WHAT HAPPENS WHEN A REQUEST FOR MUTUAL LEGAL ASSISTANCE IS RECEIVED?

MACMA designates the Attorney-General as the Central Authority for mutual assistance in New Zealand. The Attorney-General's powers under MACMA are largely delegated to the Solicitor-General, and in turn to the Deputy Solicitor-General (Criminal). Lawyers in the Criminal Team at the Crown Law Office review incoming requests and prepare outgoing requests in accordance with MACMA for approval by the Deputy Solicitor-General. If the requirements of MACMA are met, the Deputy Solicitor-General usually authorises New Zealand Police to respond to mutual assistance requests from foreign countries.

This process ensures that all relevant domestic legal and human rights issues can be considered appropriately before assistance is provided. New Zealand's mutual assistance legislation gives clear legal grounds for refusing mutual assistance requests from other countries, such as if the request relates to a matter which would not be an offence if it took place in New Zealand, is an offence of a political nature or is a request relating to proceedings on prohibited grounds of discrimination such as colour, race, sex or religion.

### WHAT WOULD ACCEDING TO THE BUDAPEST CONVENTION MEAN FOR MUTUAL ASSISTANCE?

The legislative amendments required to accede to the Budapest Convention would improve the mutual assistance process

through the addition of two law enforcement tools:

- Surveillance device warrants: At present surveillance device warrants are available domestically under the Search and Surveillance Act, but are not available under MACMA. Extending the availability of surveillance device warrants to MACMA would allow New Zealand to respond to requests from foreign countries requiring surveillance device warrants, making them available in support of foreign investigations. Surveillance device warrants can only be used for serious crimes, and can only be issued by a judge.
- Preservation orders: The development of a data preservation scheme would enable New Zealand law enforcement agencies to seek the preservation of electronic data at the request of foreign law enforcement agencies. A preservation order prevents evidence of serious crime from being deleted while a mutual assistance request is in process. This is particularly important because obtaining information through mutual assistance routinely takes six to eighteen months, and it is common for communications data to have been automatically deleted during this time.

The addition of the two new powers would complement our existing mutual assistance regime.