

PHONE: (03)5232-4111
FAX: (03)5232-4149



2-1-14 MITA
MINATO-KU, TOKYO 108-8361

AUSTRALIAN EMBASSY

<date>

<name>

<contact details>

Dear <name>,

Your arrest in Japan has been brought to the attention of this Embassy. I am writing to offer the Australian Government's consular assistance and to inform you of what consular staff in Japan and Australia can do for you and your family.

The Australian Government will help detainees as much as possible within the legal and administrative processes of the country in which they are detained. There may be limitations to what can be done and you should have realistic expectations about this. Consular assistance cannot override local laws, even when they appear harsh by Australian standards. It is recommended that you read the *Consular Services Charter* and the *Arrested or Jailed Overseas* brochure, both of which will be provided to you with this letter or at the nearest opportunity.

Initially, with your approval, we are able to inform a person nominated by you of your circumstances. It then remains your responsibility to keep them informed of the progress of your case, any funds and clothing requirements, and your general well-being. We understand, however, that in some locations correspondence with someone at home may be slow or difficult. In such circumstances, we are able to assist in relaying urgent updates or request to your nominated person.

In order to provide any information to anyone (including a lawyer appointed by you, and your family and friends) about your circumstances, we require your written permission via the enclosed 'Consent to the use and disclosure of personal information' privacy consent form. A numbered privacy consent form has been enclosed to assist you to complete the blank form correctly. Using the instructions on the back of the form as a reference, please complete the blank form. As soon as possible, hand the completed form to local authorities who will return the form to our Embassy.

If you decide that you do not wish to inform anyone, I ask that you confirm this via the privacy consent form. I should point out that if your arrest is made public by local authorities the Embassy would normally be expected to confirm this public knowledge, for instance in response to media enquiries.

You will find further information about the consular role, legal representation, funds transfers and legal financial assistance in the attached document.

If you have any questions, please do not hesitate to contact me at the Embassy address.

Yours sincerely,

<Name of case officer>

<Title>

The consular role

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. However, consular assistance cannot override local law. In broad terms, when an Australian is detained overseas we can:

- visit the person who is detained
- provide a list of local English-speaking lawyers
- arrange for family or friends to be contacted and kept informed of the situation
- raise justified and serious complaints about ill-treatment or discrimination with local authorities, if requested by the detainee
- raise medical or dental issues with local authorities, if the detainee is unable to have these issues addressed themselves
- monitor court hearings
- where applicable, provide the detainee with information on the International Transfer of Prisoners Scheme administered by the Australian Attorney-General's Department
- provide advice on managing approaches from media.

We cannot:

- get people out of jail
- intervene in another country's legal processes
- determine a detainee's innocence or otherwise
- conduct investigations
- provide legal advice or make recommendations as to which lawyer to choose
- post bail or pay lawyers' fees
- seek better treatment for the detainee than that provided to the foreign country's own citizens
- provide interpreter and/or translation services.

Local jurisdiction

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. In some locations 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. Once sentenced, you will be expected to serve your sentence in the country in which you are detained, unless you qualify for a transfer under the International Transfer of Prisoners scheme administered by the Australian Attorney-General's Department. Prison conditions in many countries can be significantly harsher than those in Australia. Part of the consular role is to ensure that Australians detained overseas should expect to receive treatment that is no worse than that received by a national of the country concerned.

Local law

The following is for your general information only. For detailed legal information or advice regarding your specific circumstances, please contact a lawyer.

Arrestees in Japan can be held for up to 23 days before they must be either charged or released. After an initial three day detention, the Public Prosecutor can choose to order two extensions of up to ten days each to allow police to investigate. According to the Japan Federation of Bar Associations, arrestees in Japan have the following rights under Japanese Law:

1. The Right to (legal) counsel,
2. The Right to remain silent, and
3. The Right to demand an impartial interpreter.

In general, during police interviews audio is not recorded and a lawyer is not present. After an interview, police or the Public Prosecutor will prepare a written statement and ask the arrestee to sign and fingerprint the statement for later use in court. If you are unsure about the statement you can refuse to sign and consult with your legal representative. The standard of police interpreters can vary and if you have any concerns you should discuss these with your legal representative.

If charged, defendants can apply for bail. Factors such as the nature of the charge(s) and immigration status may affect whether bail is granted and temporary visitors to Japan can face difficulties meeting the Court's bail conditions. For more information, you should speak directly with your legal representative.

Once charged, the defendant's case will be brought to trial before a Japanese court. Timing and length of the trial will usually depend on the complexity of the case. It is not uncommon to spend a significant period of time in detention before your case comes to trial. Legal and administrative processes are substantially different from those in Australia. There is no trial by jury in Japan. Instead, cases are tried by judges. The district courts handle most types of criminal cases in the first instance. Generally, a single judge handles a case except for certain serious crimes which are tried by a panel of three judges. For some crimes, Japanese citizens are called to serve as lay-judges (*Saiban-in*) alongside professional judges.

Funds requirements

Should you require additional funds for clothing, stationary, postage or other necessities, it is your responsibility to seek these funds directly through your own sources. We do not loan money to detainees as Japanese detention centres provide food and other essentials.

Many detention centres, police stations, and prisons in Japan will only accept custody of funds (Japanese Yen only) on your behalf if delivered in person or via registered mail. Please ask local authorities for clarification. You may also want to seek the assistance of your lawyer. If you are not personally able to make contact with your sources, we can assist by contacting them on your behalf. In such a case, we will need full contact details including name, address and telephone numbers. In certain cases, consular officers may consider using official facilities to transfer those funds.

Official facilities are not to be used for the transfer of legal fees, fines, bail monies or similar. Money for those requirements should be transferred direct to appropriate authorities.

Legal representation

Included in this information package you will find a list of local English-speaking lawyers. While every care has been taken in compiling this list, the Department of Foreign Affairs and Trade cannot guarantee the services of those lawyers listed, nor can consular officers recommend which lawyer you should choose.

Subject to the following section, the Australian Government does not cover the cost of legal representation and associated fees (such as translation or interpreter services) to Australians facing criminal charges overseas.

Legal financial assistance

Generally, the fact that an Australian citizen is facing criminal prosecution or has been convicted and is facing a prison sentence overseas, and lacks financial means, are not sufficient reasons to justify Australian Government-funded legal financial assistance.

In limited circumstances, the Australian Attorney-General's Department (AGD) may provide financial assistance for legal representation and related costs through the Scheme for overseas criminal matters involving the death penalty, and the Special circumstances scheme. Application forms can be found on the AGD website at:

<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Commonwealthlegalfinancialassistance/Pages/SpecialCircumstancesScheme.aspx>

Your consular officer can provide you with further information and application forms if you request them. We suggest family members in Australia direct any enquiries to the AGD Financial Assistance Section at finass@ag.gov.au.

Please note: AGD will accept notification (by letter or email) from a detainee, their family, DFAT or a legal representative of the detainee's intention to submit an application under the Scheme for overseas criminal matters involving the death penalty. If a grant is subsequently approved, AGD will back-date the grant to the date the notice of intention was received.

Legal aid or court-appointed defenders

You should be able to request one free or reduced fee visit from a duty lawyer (*tōban bengoshi* 当番弁護士) registered with the local Bar Association. If you wish to use this service, please notify your detaining authority. Following the first visit, if you wish to hire the duty lawyer, or any other lawyer, you may do so at your own expense. If you are unable to finance your defence, you should discuss this with your duty lawyer at your first meeting.

You will only be eligible for a court-appointed defence lawyer if your detention is extended after the initial three days or, for minor criminal matters, after charges are brought. Eligibility is a matter for the local authorities but, in general, if owing to financial difficulty you are unable to pay for a lawyer in a criminal trial the court (the Japanese state) can appoint a lawyer for you and provide an interpreter (subject to availability) if your lawyer does not speak English. If you have any questions you should discuss them with the duty lawyer.

Non-government organisations

You or your family may also like to consider engaging the services of a non-government organisation. Organisations such as Australians Detained Abroad (ADA) provide assistance, at no cost, to those who have a family member detained abroad. ADA can be contacted via its website at www.australiansdetainedabroad.org.

In circumstances where Australians are facing the death penalty overseas, the Capital Punishment Justice Project (CPJP, formerly known as Reprieve Australia) provides legal and humanitarian assistance. CPJP can be contacted via its website at reprieve.org.au.

Passport cancellation and /or refusal in relation to serious foreign offences

You should be aware that under the *Australian Passports Act 2005*, your Australian passport (or other Australian travel document) may be cancelled by the Minister for Foreign Affairs if you are the subject of an arrest warrant issued in a foreign country for a serious foreign offence, or if you are a person prevented by a law or court order of a foreign country (including imprisonment) from travelling internationally in connection with a serious foreign offence.

A further Australian passport will not be issued to you pending the outcome of all legal proceedings in the foreign country in relation to the serious offence(s).

The cancellation or refusal of your Australian passport in these circumstances, however, does not affect your status as an Australian citizen or your rights to Australian consular assistance.

Privacy

Providing consular assistance to Australians overseas is a core function of the Department of Foreign Affairs and Trade (DFAT). In order to provide effective consular assistance, DFAT is required to collect, use and disclose an individual's personal information.

The privacy of consular clients and their families is a fundamental aspect of managing consular cases. Personal information provided to the Department of Foreign Affairs and Trade (DFAT) is protected by law, including the

Privacy Act 1988. We may collect, use and disclose personal information, including to overseas recipients where we reasonably believe it is necessary, to provide consular assistance.

You may wish to read the Department's *Consular Privacy Collection Statement* (<http://www.dfat.gov.au/dept/consular/privacy.html>) which has been enclosed with this letter.

Frequently Asked Questions

How long can I expect to be detained without charge?

Experience to date is that you will be detained for the maximum period (23 days).

Can I receive visitors?

Yes, unless you are subject to communication restrictions (*sekken kinshi*) in which case you can only meet with your legal representatives or consular officers. In Japan, the Public Prosecutor can seek court approval to limit your visiting and communication privileges while in detention. This is often influenced by the nature of the alleged offence. Your lawyer can provide more detail.

Visitor regulations vary but generally exclude visits on weekends, public holidays and outside visiting hours Monday to Friday. Visitors may be required to schedule in advance and visits might be cancelled due to public prosecutor interviews, court appearances, and other police investigation activities. You may need permission to speak in a language other than Japanese and make private interpretation arrangements. Visits are usually supervised.

Can I make or receive telephone calls?

No.

How often can consular officers visit me?

We will visit you as soon as possible after notification of your detention and once permission is received from the local authorities. We would normally aim to visit once during the first 23 days but timing of this visit will depend on the severity of the charge, your location and consular staff resources. You will appear before the prosecutor a number of times in the first weeks of detention. Police may also require you to visit various locations associated with gathering evidence. This can cause delays while we seek necessary approvals for consular officers to visit.

If you are charged, we will establish a schedule of regular visits (e.g. once every three or six months). You should discuss this with your consular officer.

Can I buy supplementary food and other necessities?

Usually yes, depending on local police station or detention centre arrangements. You will need to pay in cash.

Can I see a doctor?

Yes, you will receive regular twice-monthly health examinations. Additionally, you can request the police provide you with medical attention other times if you are injured or ill.

Can my family send a care package?

Yes. Check with your lawyer and local authorities. Many police stations will not permit detainees English-language reading or writing materials if not accompanied by a Japanese translation, and have strict rules regarding clothes.

Can consular officers be my legal representative?

No. Consular officers are not lawyers and cannot provide you or your family with legal advice.

How much is a private lawyer in Japan?

Lawyers are expensive and can start with a retainer of \$5,000 or more if the case goes to trial. If you need to request funds from friends or family to finance your defence you should discuss this with your consular officer.

How good are court appointed defence lawyers and should I engage a private lawyer instead?

We are unable to comment on the competence of any lawyer or make recommendations as to which lawyer you should choose. Because of expensive fees, most defendants opt for a court appointed lawyer at no cost. If you do

choose a court appointed lawyer, you will need to accept that your lawyer may not be available on call and speak only limited English.

My lawyer speaks little English and I am having difficulty understanding. Can consular officers help interpret?

No. We do not provide interpreting services. Your court appointed lawyer should be able to arrange (Japanese state-funded) interpreting services and you should discuss this with them. If satisfactory arrangements cannot be made, you may engage an English-speaking lawyer or interpreter privately (at your own cost).

My lawyer has suggested I make a payment to the victim of my alleged offence. Why?

Assuming responsibility and making restitution by way of apology and a payment of money to restore the alleged victim's feelings is common in Japan. You should ask your lawyer to provide more detail.

What happens if the Japanese authorities decide to deport me?

You will be transferred into the custody of Japanese Immigration following completion of court proceedings. Processing to departure usually takes between seven and ten working days unless you object to the deportation order or have lodged an appeal. You will be required to provide the funds to cover the cost of your return home. If you are unable to arrange the funds you will remain in Immigration detention for an extended period, often over a year. We understand that a record of deportation is made and return to Japan is barred for a period determined by court edict or circumstances applying to the case.