

# “Bali 9” Tragedy

Robert Myers

## *Mutual Assistance in Criminal Matters Legislation Amendment Bill 1996*

- clarify the areas in which mutual assistance in criminal matters may only be sought by the Attorney-General and the areas in which assistance may be sought using other channels
- enable the Attorney-General to grant or request assistance without the Act having to be applied by regulation to a particular country
- give the Attorney-General a discretion to refuse assistance where the request relates to the prosecution or punishment of a person for an offence in respect of which the death penalty could be imposed or carried out
- enable the Attorney-General to refuse assistance where he considers it appropriate in the circumstances of a particular request

# *Mutual Assistance in Criminal Matters Act* *1987 (Cth) s 8*

- (1A) A request by a foreign country for assistance under this Act must be refused if it relates to the prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed in the foreign country, unless the Attorney-General is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.
- (1B) A request by a foreign country for assistance under this Act may be refused if the Attorney-General:
  - (a) believes that the provisions of the assistance may result in the death penalty being imposed on a person; and
  - (b) after taking into consideration the interests of international criminal co-operation, is of the opinion that in the circumstances of the case the request should not be granted.

# Death Penalty Charge Guide

- “The Attorney-General in consultation with the Minister for Justice has determined that in future Australia will exercise a discretion when considering foreign *requests*\* for mutual assistance in criminal matters where the *request*\* relates to a charge attracting the death penalty under the law of the *requesting*\* country. In exercise of that discretion, assistance may be refused in the absence of an assurance from the *requesting*\* country that the death penalty would not be imposed or carried out. The Attorney-General has decided that this policy will also apply to police *requests*\*”.

# Death Penalty Charge Guide

- “Consistent with the “Attorney-General’s decision, in future the following will apply in relation to AFP cooperation with overseas law enforcement agencies:
  - police to police cooperation may continue on the present basis, i.e. the AFP may provide such assistance *as requested*, provided it meets existing policy guidelines, irrespective of whether the investigation may later result in charges being laid which may attract the death penalty. (My emphasis added)
  - where the assistance of the AFP *is sought* by the police or another law enforcement agency of a foreign country in relation to a matter in which a charge has been laid under the law of that foreign country, for a crime attracting the death penalty, no action is to be taken, nor should any indication be given as to the decision likely to be made in respect of the *request*. All such *requests* are to be notified to the Director International Operations as soon as possible after receipt. Following consultation with the Attorney-General’s Department, the General Manager National Operations will provide the Commissioner and Deputy with such advice as considered necessary in order that advice may be provided to the Minister for Justice and the Attorney-General:” (My emphasis added)

# Deputy Commissioner Phelan

- “ ... I’ve seen the misery that drugs cause to tens of thousands of families in this country. We are charged with executing the laws of this country to the best of our ability. That’s the sort of thing that weighed on my mind at the moment. Yes, I knew full well that by handing over the information and requesting surveillance and requesting the evidence gathered (sic) if they found them in possession of drugs they would take action and expose them to the death penalty. I knew that.
- “I went in with an open mind but I weighed up a number of things in my mind as to what I thought was appropriate and I’ve agonised over it for ten years now and every time I look back, I still think it’s a difficult decision, but given what I knew at that particular time and what our officers knew, I would take a lot of convincing to make a different decision ... It was not easy.”

# Deputy Commissioner Phelan

- “The important point to note here is that Scott Rush was linked to three airport alerts, not one, but three. First the alert that was placed as a result of the conversation with his father; the second, an alert was placed because proximate to the same time an anonymous information came to Crime Stoppers into New South Wales and a pass alert or an alert was put on at the same time. The third one was another alert that had been previously put on in relation to one of the subsequent people arrested in Bali. He was directly linked through the travel bookings with that individual so on three separate occasions, Scott Rush was linked to the syndicate.”

## Letter 1 – Paul Hunniford (then AFP Senior Liaison Officer in Bali)

The letter from Paul Hunniford, the AFP Senior Liaison Officer in Bali, of 8th April 2005, was headed:-

“Heroin couriers from Bali to Australia – Currently in Bali”

Dengan hormat,

It went on to say:

“The AFP in Australia have (sic) received information that a group of persons are allegedly importing a narcotic substance (believed to be Heroin) from Bali to Australia using 8 individual people carrying body packs strapped to their legs and back. More specifically the information received that:

“The group planned to conduct an importation in December 2004. The group travelled to Bali in December 2004 but the importation was cancelled because there was not enough money to buy ‘the stuff’ and that they would be travelling again in 3-6 months. The group returned to Australia

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“The couriers were given instructions not to smoke cigarettes for two weeks prior to travel as they would not be allowed to smoke on the return flight as they may appear nervous. They were to carry body packs (containing white powder) back to Australia by using packs on both legs and the back supports. The packs were to be tightly taped to the person’s body. Members of the group were given expense money and told to change the money into local currency to allow them to buy oversized clothes and thongs. The clothes and thongs were not to have any metal on them to avoid the metal detectors at the airports. The couriers received pre-paid mobile telephones. On return through Customs they were told to be carried (sic) a wooden carving for declaration to Quarantine to by-pass Customs.

“Couriers –

YANG, Alice dob 9 Dec 1985

NGUYEN, Thanh Nhan dob 30 Nov 1986

LEE, Francis dob 14 March 1983

CAO, Shaode dob 26 Sep 1986

HUANG, Danny dob 7 Dec 1986

LAU, Ina Yuk Teng 3 Feb 1986

LAWRENCE, Renae dob 11 Oct 1977

NORMAN, Matthew 17 Sept 1986

## Letter 1 – Paul Hunniford (then AFP Senior Liaison Officer in Bali)

“Enquiries reveal that Andrew CHAN bn: 12/0111984 (sic) (21)...Sydney (NSW D/L) organised travel for some of the December 2004 couriers. Travel movements show that CHAN has travelled previously to Bali in August 2004 (11 days) and October 2004 (7 days).

“On Sunday 3 April 2004 CHAN departed Sydney for Denpasar, Bali. His travel itinerary indicates that he is booked to stay at the Hard Rock Café Kuta and is due to return on Friday 15 April 2005.

“On Wednesday 6 April 2005 four suspected couriers departed Sydney for Denpasar on AO7829:

Renaë LAWRENCE bn: 11/10/1977

Matthew NORMAN bn: 17/09/1986

Martin STEPHENS bn: 13/04/1976

## Letter 1 – Paul Hunniford (then AFP Senior Liaison Officer in Bali)

Si Yi CHEN bn: 19/03/1985

“They are due to return to Australia on Friday 15 April 2005, the day after CHAN returns. At this stage it is unknown who is the source of the narcotics in Bali. If identified by INP it is strongly requested that no action is taken until interdiction commences in Australia as early interdiction will hamper the identification of the organiser/recipients in Australia. Also until the possible narcotics are located on the couriers it is possible that the syndicate is still in the organisational phase.

“About 0900 hrs this date Friday 8 April the AFP have (sic) received information that a further 3 suspect couriers departing on Australian Airlines flight no AO7829 to Denpasar. Return date not confirmed at this stage.

Tan Duc Thanh NGUYEN bn: 30/10/1982

Michael William CZUGAJ bn: 21/06/1985 (Russian)

...

Scott Anthony RUSH bn: 03/12/1985

...

## Letter 1 – Paul Hunniford (then AFP Senior Liaison Officer in Bali)

### “Request

The AFP would like to identify the source of the drugs and the organisers (other than CHAN) in Australia. We would also like to gain evidence of association between CHAN and the suspected couriers. To do this it (sic) I ask that

- “1. That the suspected couriers due to arrive this date be oversighted to identify their intended address in Australia.
- “2. INP obtain as much evidence/intelligence as possible to assist AFP identify the organisers in Australia and source of narcotics in Indonesia.
- “3. We request surveillance to be carried out on CHAN and the couriers until departure.
- “4. should they suspect that CHAN and/or the couriers are in possession of drug at the time of their departure that they take what action they deem appropriate.
- “5. Could INP make inquiries to establish if CHAN is staying at the Hard Rock Hotel and to identify any associates, especially meetings with the above mentioned or the identity of other possible couriers.
- “6. Could copies of all passenger arrival cards be obtained.
- “7. Request photos be taken of any meetings for possible use in proceedings here.
- “8. If possible obtain phone records of any numbers being called in Australia by either CHAN or the couriers. This may assist AFP identify the organisers in Australia and possible telephone interception.”

## Letter 2 – Paul Hunniford (then AFP Senior Liaison Officer in Bali)

On 12<sup>th</sup> March, Officer Hunniford sent a further letter to the INP. It stated, insofar as is presently relevant:

“Subject:

Suspected heroin couriers from Bali to Australia – Additional intelligence

Dengan hormat

Enquiries reveal that:

Andrew CHAN bn: 12/011984 (sic)  
Renaë LAWRENCE bn: 11/10/1977  
Matthew NORMAN bn: 17/09/1986  
Martin STEPHENS bn: 13/04/1976  
Csiyi CHEN bn: 19/03/1985

are due to return to Australia on Thursday 14 April 2005, on the Australian airlines flight AO7830 scheduled to depart at 22.40 hrs. Intelligence suggests that CHAN may not be in possession of narcotics but will possibly act as oversight on the flight. It is also suspected that Chan would take possession of the narcotics after they arrived in Australia.

## Letter 2 – Paul Hunniford (then AFP Senior Liaison Officer in Bali)

“Enquiries reveal that:

Tan Duc Thahn NGUYEN bn: 30/10/1982

Michael William CZUGAJ bn: 21/06/1985 (Russian)

....

Scott Anthony Rush bn: 03/12/1985

...

are due to return to Australia on Saturday 16<sup>th</sup> April 2005, on Australian Airlines flight AO7830 scheduled to depart at 22.40 hrs. Intelligence suggests that NGUYEN may also not have narcotics in his possession and may only oversight/organise the couriers.

“Request

If arrests are made on 14 April it is likely that NYUYEN (sic), CZUGAJ and RUSH will become suspicious of the arrest and decide not to attempt to board the Saturday flight with narcotics. I therefor (sic) request that you consider searching NYUYEN (sic), CZUGAJ and RUSH soon after the first group are intercepted:”

# Rush & Ors v Commissioner

“It was the triggering of this alert (one of the three PACE alerts that had been activated by Scott Rush on the occasion of his departure) which connected Mr Rush with eight other persons of interest. It was information obtained in the course of this extant AFP investigation (including as a result of the activation of the PACE alert handled by Federal Agent Hingst) which caused Mr Rush’s details to be included in the AFP letters of 8 and 12 April.”

# Rush & Ors v Commissioner

“My conclusion at this stage (passengers having commenced boarding the flight to Bali) was that there was no reason for Scott Rush to be detained and that he should be allowed to leave without being disturbed. My view was that despite the concerns of Lee Rush, Scott Rush was an adult and there was no basis for detaining Scott Rush. I recall running my decision past my supervisor after outlining the result of my investigations and that my supervisor agreed with my decision.”