

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 282

Issued by the authority of the Minister for Home Affairs

International Transfer of Prisoners Act 1997

International Transfer of Prisoners (Vietnam) Regulations 2009

Section 58 of the *International Transfer of Prisoners Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act forms the basis for the International Transfer of Prisoners scheme (the scheme) in Australia. The scheme allows Australians imprisoned overseas, and persons imprisoned overseas who have community ties with Australia, to apply to return to Australia to serve the remainder of their sentence in an Australian prison. The scheme also allows foreign nationals who are imprisoned in Australia to apply to serve the balance of their sentence in their home country.

Subsection 8(1) of the Act provides that the regulations may apply the Act to a foreign country and may declare that country to be a transfer country for the purposes of the Act. Subsection 8(2) provides that the regulations may declare that the Act applies in relation to such a foreign country subject to limitations, conditions, exceptions or qualifications referred to in the regulations. Paragraph 8(3)(a) provides that the limitations, conditions, exceptions or qualifications can include those necessary to give effect to a treaty, a copy of which must be set out in the regulations.

The *International Transfer of Prisoners (Vietnam) Regulations 2009* (the Regulations) declare that Vietnam is a transfer country, and apply the Act to Vietnam subject to the *Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam concerning Transfer of Sentenced Persons* (the Agreement). A copy of the Agreement is set out in Schedule 1 to the Regulations.

The Regulations commence on the day the Agreement enters into force for Australia. The Agreement will enter into force for Australia thirty days after the date on which the Parties have notified each other in writing that their respective requirements for entry into force of the Agreement have been complied with.

Consultation was unnecessary for this legislative instrument as this instrument has no direct or substantial indirect effect on business.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations will commence on the day the Agreement comes into force for Australia.

Regulation 3 defines the terms used in the Regulations.

Regulation 4 declares that Vietnam is a transfer country.

Regulation 5 provides for the application of the Act to Vietnam.

Schedule 1 contains the text of the Agreement.