



International Transfer of Prisoners (Vietnam) Regulations 2009¹

Select Legislative Instrument 2009 No. 282

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *International Transfer of Prisoners Act 1997*.

Dated 29 October 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BRENDAN O'CONNOR
Minister for Home Affairs

1 Name of Regulations

These Regulations are the *International Transfer of Prisoners (Vietnam) Regulations 2009*.

2 Commencement

These Regulations commence on the day the agreement comes into force for Australia.

3 Definitions

In these Regulations:

Act means the *International Transfer of Prisoners Act 1997*.

agreement means the Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam concerning Transfer of Sentenced Persons, done at Canberra on 13 October 2008, a copy of the English text of which is set out in Schedule 1.

4 Declaration of Vietnam as a transfer country

Vietnam is declared to be a transfer country.

5 Application of the Act

The Act applies to Vietnam subject to the agreement.

Schedule 1 Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam concerning Transfer of Sentenced Persons

(regulation 3, definition of *agreement*)

Australia and the Socialist Republic of Vietnam (hereinafter referred to as “the Parties”);

Taking into consideration the laws and regulations in force regarding law enforcement of the Parties and the desirability of enhancing their cooperative efforts in law enforcement and the administration of justice;

Desiring to cooperate in the transfer of sentenced persons to facilitate their successful reintegration into society; and

Desiring to cooperate in the enforcement of penal sentences;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

- (a) “transferring Party” means the Party from whose jurisdiction the sentenced person may be, or has been, transferred.
- (b) “receiving Party” means the Party to whose jurisdiction the sentenced person may be, or has been, transferred.

- (c) “sentenced person” means a person who is required to be detained in a prison, a hospital or any other place in the territory of the transferring Party to serve a sentence imposed by a court of the transferring Party.
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court.
- (e) “territory” means
 - (i) in respect of Vietnam: the territory of the Socialist Republic of Vietnam; and
 - (ii) in respect of Australia: all Australian States and Territories.
- (f) “community ties” means:
 - (i) the prisoner's principal place of residence immediately before being sentenced to imprisonment in the territory of the transferring Party was in the territory of the receiving Party; or
 - (ii) the prisoner's parent, grandparent or child has a principal place of residence in the territory of the receiving Party; or
 - (iii) the prisoner is married to or has a de facto relationship with anyone whose principal place of residence is in the territory of the receiving Party; or
 - (iv) in exceptional circumstances where the prisoner has a close continuing relationship (involving frequent personal contact and a personal interest in the other person's welfare) with anyone whose principal place of residence is in the territory of the receiving Party.

ARTICLE 2

PURPOSE OF AGREEMENT

- (1) The Parties undertake to afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.

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- (2) A sentenced person may be transferred from the territory of the transferring Party to the territory of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on them.

ARTICLE 3

CENTRAL AUTHORITIES

- (1) The Central Authority for the Socialist Republic of Vietnam is the Ministry of Public Security. The Central Authority for Australia is the Australian Government Attorney-General's Department. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (2) The Central Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Agreement.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

ARTICLE 4

CONDITIONS FOR TRANSFER

A sentenced person may be transferred under this Agreement only on the following conditions:

- (a) The acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving Party, or would constitute such a criminal offence if committed within the jurisdiction of the receiving Party. This requirement may be waived in a particular case if both Parties agree and to the extent permitted by the domestic law of the receiving Party;

- (b) Where the Socialist Republic of Vietnam is the receiving Party the sentenced person is a national of the Socialist Republic of Vietnam;
- (c) Where Australia is the receiving Party the sentenced person is:
 - (i) an Australian national; or
 - (ii) is permitted to travel to, enter and remain indefinitely in Australia in accordance with Australian law and has community ties with a State or Territory of Australia;
- (d) The sentenced person has at least one year remaining to be served at the time of the request for transfer. This requirement may be waived by the agreement of the Parties;.
- (e) The judgment is final and no other legal proceedings relating to the offence or any other offence are pending in the transferring Party;
- (f) The transferring and receiving Parties and the sentenced person all consent to the transfer. Where the sentenced person is incapable of giving consent under the law of the transferring Party, consent may be given by a person entitled to act on their behalf;
- (g) Where Australia is the transferring Party, and where the sentenced person was sentenced under the laws of an Australian State or Territory, the State or Territory Government enforcing the sentence consents to the transfer;
- (h) Where Australia is the receiving Party, the Government of the Australian State or Territory in which the sentence will be enforced consents to the transfer;
- (i) The sentenced person has been fully informed by the receiving Party of any costs associated with the transfer that the receiving Party may seek to recover from the sentenced person in accordance with Article 12(2).

ARTICLE 5

PROCEDURE FOR TRANSFER

- (1) The Parties shall endeavour to inform sentenced persons of the substance of this Agreement:
- (2)
 - (a) If the sentenced person wishes to be transferred, they may express such a wish to the transferring Party or the receiving Party, either of whom must inform the other Party in writing.
 - (b) A request for transfer may be made by the transferring Party or the receiving Party to the other Party.
 - (c) Requests for transfer shall be in writing and shall include the following information:
 - (i) the full name, day, month, year and place of birth of the sentenced person;
 - (ii) a statement of the nationality or residence status of the sentenced person; and
 - (iii) the location of the sentenced person and current address.
- (3) Where a request for transfer has been made, the transferring Party shall provide the receiving Party with the following information:
 - (a) a statement of the facts upon which the conviction and sentence were based and a statement of the relevant law creating the offence;
 - (b) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remissions to which they are entitled on account of work done, good behaviour, pre-trial confinement or other reasons;

- (c) a copy of the certificate or record of conviction and sentence and, if available, copies of any judgments and sentencing remarks;
 - (d) details of any request for extradition of the sentenced person that has been made to the transferring Party or of any State that has expressed interest in extraditing the sentenced person or that is likely, in the opinion of the transferring Party, to request extradition;
 - (e) any corrections, medical or social reports on the sentenced person, information about their treatment in the transferring Party, and any recommendation for their further treatment in the receiving Party; and
 - (f) any other additional information requested by the receiving Party.
- (4) The receiving Party must provide the transferring Party with the following information before transfer, if requested by the transferring Party:
- (a) a document or statement indicating that the sentenced person complies with the conditions in Article 4(b) or 4(c);
 - (b) a statement that the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving Party or would constitute such a criminal offence if committed within the jurisdiction of the receiving Party. Alternatively, a statement that the receiving Party waives this requirement to the extent permitted by its domestic law;
 - (c) a statement describing how the sentenced person's sentence would be enforced by the receiving Party; and
 - (d) any other additional information.

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- (5) Either Party shall, as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to a transfer.
 - (6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the territory of the transferring Party as agreed upon by both Parties.

ARTICLE 6

CONSENT OF THE SENTENCED PERSON

- (1) The transferring Party shall ensure that the sentenced person consents to the transfer voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring Party.
- (2) The transferring Party shall afford an opportunity to the receiving Party, if the receiving Party so desires, to verify through an official designated by the receiving Party, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(f) is given voluntarily and with full knowledge of the legal consequences thereof.

ARTICLE 7

RETENTION OF JURISDICTION

The transferring Party shall retain jurisdiction for the review, revision, modification, cancellation, pardon, amnesty or commutation of convictions and sentences imposed by its courts.

ARTICLE 8

CONTINUED ENFORCEMENT OF SENTENCE

- (1) The receiving Party shall enforce the sentence as imposed by the transferring Party.
- (2) Notwithstanding the requirements of Article 8(3), the continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party.
- (3) If the sentence is by its nature or duration incompatible with the law of the receiving Party, the receiving Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed by the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration.
- (4) The receiving Party may, if a sentenced person is a juvenile according to its law, treat the sentenced person as a juvenile regardless of their status under the law of the transferring Party.
- (5) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party in accordance with Article 7.
- (6) The Parties shall inform the sentenced person in writing of any action or decisions taken by the transferring Party or the receiving Party under paragraphs (2) to (5) of this Article.

ARTICLE 9

INFORMATION ON ENFORCEMENT OF SENTENCE

The receiving Party shall provide information to the transferring Party concerning enforcement of the sentence:

- (a) if the sentenced person is granted conditional release;
- (b) when it considers enforcement of the sentence to have been completed;
- (c) if the sentenced person has escaped from custody, or if the sentenced person dies, before enforcement of the sentence has been completed;
- (d) if the transferring Party requests a report.

ARTICLE 10

TRANSIT OF SENTENCED PERSON

If either Party transfers a sentenced person to or from a place outside of its territory the other Party shall, subject to its domestic law, cooperate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 11

LANGUAGE

Requests for transfer and accompanying documents shall be accompanied by a translation into an official language of the receiving Party.

ARTICLE 12

EXPENSES

- (1) The receiving Party shall bear the expenses of:
 - (a) the transfer of the sentenced person, except the expenses incurred exclusively in the territory of the transferring Party; and
 - (b) the continued enforcement of the sentence after transfer.
- (2) The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.

ARTICLE 13

CONSULTATION

The Central Authorities of the Parties may consult with each other to promote the most effective use of this Agreement and to agree upon such practical measures as may be necessary to facilitate the implementation of this Agreement.

ARTICLE 14

SETTLEMENT OF DISPUTES

- (1) The Parties shall seek to resolve any dispute arising out of the interpretation, application or implementation of this Agreement through the Central Authorities.
- (2) If the Central Authorities are unable to resolve a dispute as envisaged in Article 14 (1), the Parties shall seek to resolve the dispute through diplomatic channels.

ARTICLE 15

TERRITORIAL APPLICATION

This Agreement shall apply to the territory of Australia and the territory of the Socialist Republic of Vietnam.

ARTICLE 16

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) This Agreement shall apply to any request for transfer presented after the entry into force of the Agreement even if the sentence was imposed before the date of entry into force of this Agreement.
- (3) Either Party may terminate this Agreement at any time by giving notice in writing to the other. In that event the Agreement shall cease to have effect six months after the date of receipt of the notice.

In witness whereof the undersigned, being duly authorised by their respective States have signed this Agreement.

Done in duplicate at Canberra, this thirteenth day of October two thousand and eight in the English and Vietnamese languages, each text being equally authentic.

For Australia

For the Socialist Republic of Vietnam

.....
Hon. Robert Debus
Minister for Home Affairs

.....
Lieutenant-General Tran Dai Quang
Vice-Minister of Public Security

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.