



Extradition (Vietnam) Regulation 2013

Select Legislative Instrument No. 194, 2013

I, Quentin Bryce AC CVO, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Extradition Act 1988*.

Dated 25 July 2013

Quentin Bryce
Governor-General

By Her Excellency's Command

Jason Dean Clare
Minister for Home Affairs

OPC50359 - A

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Part 1—Preliminary

1 Name of regulation

This regulation is the *Extradition (Vietnam) Regulation 2013*.

2 Commencement

This regulation commences on the day the extradition treaty enters into force.

Note: Article 20 of the extradition treaty sets out when the extradition treaty enters into force.

3 Authority

This regulation is made under the *Extradition Act 1988*.

4 Definitions

In this regulation:

Act means the *Extradition Act 1988*.

extradition treaty means the Treaty between Australia and the Socialist Republic of Vietnam on Extradition, done at Canberra in Australia on 10 April 2012 and set out in Schedule 1.

Vietnam means the Socialist Republic of Vietnam.

5 Declaration of Vietnam as extradition country

For paragraph (a) of the definition of *extradition country* in section 5 of the Act, Vietnam is declared to be an extradition country.

6 Application of Act

For paragraph 11(1)(a) of the Act, the Act applies to Vietnam subject to the extradition treaty.

Schedule 1—Treaty between Australia and the Socialist Republic of Vietnam on Extradition

TREATY BETWEEN AUSTRALIA AND THE SOCIALIST REPUBLIC OF VIETNAM ON EXTRADITION

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

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

HAVE AGREED as follows:

ARTICLE 1 OBLIGATION TO EXTRADITE

Each Party agrees to extradite to the other Party, in accordance with the provisions of this Treaty, any person who is found in its territory and sought by the other Party for prosecution, or the imposition or enforcement of a sentence for an extraditable offence.

ARTICLE 2 EXTRADITABLE OFFENCES

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Parties by imprisonment for a maximum period of at least one year or by a more severe penalty.

2. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.

3. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Parties:

a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;

b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.

4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting Party.

5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted, pursuant to this Treaty, where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. Extradition may be granted under this Treaty provided that:

a) the conduct in respect of which extradition is sought constituted an offence in the Requesting Party at the time it occurred; and

b) the conduct would, if it had taken place in the territory of the Requested Party at the time the request for extradition was received, have constituted an offence in that Party.

ARTICLE 3 EXCEPTIONS TO EXTRADITION

1. Extradition shall be refused if:

a) the Requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, ethnic origin, gender, language, religion, nationality, political opinion or other status, or that that person's position may be prejudiced for any of those reasons;

b) the person has been acquitted or pardoned, or has undergone the punishment provided by the law of the Requested Party, or a third State, in respect of the offence for which the person's extradition is sought;

c) the person whose extradition is sought has, according to the law of the Requesting Party, become immune from prosecution or punishment by reason of lapse of time;

d) the offence of which the person sought is accused or convicted, or any other offence for which that person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting Party, unless that Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out; or

e) the Requested Party has substantial grounds for believing that the person whose extradition is sought would be subjected in the Requesting Party to torture.

2. Extradition may be refused if:

a) the offence for which extradition is sought is regarded by the Requested Party as a political offence. The Parties will not consider as a political offence the taking or attempted taking of the life or an attack on the person of a Head of State or a member of his or her family, or conduct which is required to be punishable as a criminal offence under multilateral treaties to which both Parties are parties;

b) the offence for which extradition is sought is regarded by the Requested Party as an offence under military law, but not an offence under the ordinary criminal law of the Requested Party;

c) the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within that Party;

d) a prosecution in respect of the offence for which extradition is sought is pending in the Requested Party against the person whose extradition is sought;

e) the competent authorities of the Requested Party have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is sought;

f) the person whose extradition is sought has been sentenced or would be liable to be tried or sentenced in the Requesting Party by an extraordinary or *ad hoc* court or tribunal; or

g) the Requested Party, while taking into account the seriousness of the offence and the interests of the Requesting Party, considers that the extradition of the person would be unjust or oppressive, or, in exceptional cases, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

ARTICLE 4

EXTRADITION OF NATIONALS

1. Each Party shall have the right to refuse extradition of its nationals.
2. Where the Requested Party refuses to extradite a national of that Party it shall, if the other Party so requests and the laws of the Requested Party allow, submit the case to its competent authorities to determine whether proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken.

ARTICLE 5

RELATIONSHIP WITH MULTILATERAL CONVENTIONS

This Treaty shall not affect any obligations of the Parties under any multilateral convention to which they both are parties.

ARTICLE 6

EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with paragraph 2 of Article 8. Three copies of the request and supporting documents shall also be provided. However, the copies do not require authentication.

2. The request for extradition shall be accompanied:

- a) in all cases by:
 - (i) a statement of each offence for which extradition is sought;

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- (ii) a statement of the conduct which is alleged against the person in respect of each offence for which extradition is sought;
 - (iii) the text of the laws establishing each offence and describing the penalty which may be imposed;
 - (iv) a statement regarding any applicable time limitations;
 - (v) the details necessary to establish the identity and nationality of the person sought including, when possible, photographs and fingerprints; and
 - (vi) a statement of the current location of the person, if known.
- b) if the person is accused of an offence – by a warrant for the arrest of the person, or a copy thereof;
 - c) if a person has been convicted of an offence in his or her absence – by a judicial or other document, or a copy thereof, authorising the apprehension of the person and a statement setting out the procedures available to that person to appeal against or otherwise challenge the conviction and the sentence imposed;
 - d) if the person has been convicted of an offence in his or her presence and has been sentenced – by documents providing evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
 - e) if the person has been convicted of an offence in his or her presence but no sentence has been imposed – by documents providing evidence of the conviction and a statement affirming that it is intended to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the official language of the Requested Party.

ARTICLE 7

SIMPLIFIED EXTRADITION

To the extent permitted by the law of the Requested Party, extradition of a person may be granted pursuant to the provisions of this Treaty notwithstanding that the requirements of Paragraph 1 and Paragraph 2 of Article

6 have not been complied with provided that the person claimed consents to an order for extradition being made.

ARTICLE 8

AUTHENTICATION OF SUPPORTING DOCUMENTS

1. A document that, in accordance with Article 6, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested Party.

2. A document is authenticated for the purposes of this Treaty if:

- a) it purports to be signed or certified by a Judge, Magistrate or an officer of the Requesting Party; and
- b) it purports to be authenticated by an official seal of a competent authority or officer of the Requesting Party.

ARTICLE 9

ADDITIONAL INFORMATION

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

ARTICLE 10

PROVISIONAL ARREST

1. In case of urgency, a Party may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL), the diplomatic

channel or directly between the Central Authorities for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application shall be made in writing and transmitted by any means including electronic means.

2. The application shall contain:

- a) a statement about the reasons for urgency prompting the making of the application;
- b) a description of the person sought, including, if possible, a photograph or fingerprints;
- c) the location of the person sought, if known;
- d) a statement of the offences allegedly committed by the person, or of which he or she has been convicted;
- e) a concise statement of the conduct alleged to constitute each offence;
- f) a statement of the existence of a warrant of arrest, or finding of guilt or judgement of conviction, against the person sought;
- g) a statement of the punishment that can be, or has been, imposed for the offences; and
- h) a statement that a request for the extradition of the person is to follow.

3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result of its application.

4. A person arrested upon such an application may be set at liberty upon the expiration of 60 days from the date of that person's arrest if a request for extradition, supported by the documents specified in Article 6, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings to extradite the person sought if the extradition request is subsequently received.

ARTICLE 11

CENTRAL AUTHORITIES

1. The Central Authority for Australia is the Australian Government Attorney-General's Department. The Central Authority for the Socialist

Republic of Vietnam is the Ministry of Public Security. Either Party may change its Central Authority in which case it shall notify the other of the change through diplomatic channels.

2. The Central Authorities may communicate directly with each other for the purposes of this Treaty.

ARTICLE 12 CONCURRENT REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the Requested Party shall determine to which of those States the person is to be extradited and shall notify the Requesting Party of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all relevant circumstances and, in particular, to:

- a) if the requests relate to different offences – the relative seriousness of the offences;
- b) the time and place of commission of each offence;
- c) the respective dates of the requests
- d) the nationality of the person;
- e) the ordinary place of residence of the person; and
- f) the possibility of any of the Requesting States extraditing the person to another State.

ARTICLE 13 SURRENDER

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party.

2. Where extradition is granted, the Requested Party shall surrender the person from a point of departure in its territory acceptable to both Parties.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party

specifies and, if the person is not removed within that period, the Requested Party may refuse to extradite that person for the same offence.

4. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The Parties shall agree upon a new date of surrender, and the provision of paragraph 3 of this Article shall apply.

ARTICLE 14

SURRENDER OF PROPERTY

1. To the extent permitted under the law of the Requested Party and subject to the rights of third parties which shall be duly respected, all property found in the Requested Party that has been acquired as a result of the offence or may be required as evidence shall be surrendered if extradition is granted and the Requesting Party so requests.

2. Subject to paragraph 1 of this Article, the abovementioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out, including but not limited to circumstances where the extradition cannot be carried out because of the death, disappearance or escape of the person sought.

3. Where the law of the Requested Party or the rights of third parties so require, any articles so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

4. If the abovementioned property is required for an investigation or prosecution of an offence in the Requested Party, then the delivery of that property may be delayed until the completion of the investigation or prosecution, or it may be delivered on condition that it shall be returned after the conclusion of the proceedings in the Requesting Party.

ARTICLE 15

POSTPONEMENT OF EXTRADITION AND TEMPORARY SURRENDER

1. The Requested Party may postpone the surrender of a person in order to proceed against that person, or so that the person may serve a sentence, for an offence other than an offence constituted by conduct for which extradition is

sought. In such cases the Requested Party shall advise the Requesting Party accordingly.

2. When, in the opinion of the competent medical authority in the Requested Party, the person whose extradition is sought cannot be transported from the Requested Party to the Requesting Party without serious danger to the person's life due to grave illness, the surrender of the person shall be postponed until such time as the danger has been sufficiently mitigated.

3. When the person is serving a sentence in the territory of the Requested Party for an offence other than an offence constituted by the conduct for which extradition is sought, the Requested Party may temporarily surrender the person to the Requesting Party to be prosecuted for an offence for which extradition is sought. The person so surrendered shall be kept in custody in the Requesting Party and shall be returned to the Requested Party after proceedings against the person have concluded, in accordance with written conditions to be mutually determined by the Parties.

ARTICLE 16

RULE OF SPECIALITY

1. Subject to paragraph 2 of this Article, a person extradited under this Treaty shall not be detained, proceeded against or subject to the enforcement of a sentence in the territory of the Requesting Party for any offence committed before his or her extradition other than:

- a) an offence for which extradition was granted;
- b) any other extraditable offence provable on the same facts and punishable by the same or lesser penalty as the offence for which extradition was granted; or
- c) any other extraditable offence in respect of which the Requested Party consents. A request for consent shall be accompanied by such of the documents mentioned in Article 6 as are sought by the Requested Party, as well as a record of any statement made by the extradited person in relation to the offence.

2. Paragraph 1 of this Article does not apply if:

- a) the person has had an opportunity to leave the territory of the Requesting Party and has not done so within forty-five days of final discharge in respect of the offence for which the person was extradited; or

b) the person has voluntarily returned to the territory of the Requesting Party after leaving it.

ARTICLE 17

SURRENDER TO A THIRD STATE

Where a person has been extradited to the Requesting Party by the Requested Party, the first-mentioned Party shall not extradite that person to any third State for an offence committed before that person's extradition unless:

a) the Requested Party consents to the extradition—a request for consent shall be accompanied by such of the documents mentioned in Article 6 as are sought by the Requested Party;

b) the person has had an opportunity to leave the territory of the Requesting Party and has not done so within forty-five days of final discharge in respect of the offence for which the person was extradited; or

c) the person has voluntarily returned to the territory of the Requesting Party after leaving it.

ARTICLE 18

TRANSIT

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory.

2. Permission for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require that other Party to furnish a request for transit as provided for in paragraph 1 of this Article.

3. Upon receipt of a request for permission for transit, the Requested Party shall grant permission unless there are reasonable grounds for refusing to do so.

4. Permission for the transit of a person shall, subject to the law of the Requested Party, include permission for the person to be held in custody during transit.

5. Where a person is being held in custody pursuant to paragraph 4 of this Article, the Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

6. The Party to which the person is being extradited shall reimburse the other Party for any expense incurred by that other Party in connection with the transit.

ARTICLE 19 EXPENSES

1. The Requested Party shall make all necessary arrangements for and meet the costs of any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall bear the expenses incurred in its territory in the arrest and detention of the person whose extradition is sought until that person is surrendered to a person nominated by the Requesting Party.

3. The Requesting Party shall bear the expenses incurred in conveying the person from the territory of the Requested Party.

ARTICLE 20 ENTRY INTO FORCE AND TERMINATION

1. Each Party shall inform the other by diplomatic note when all necessary steps have been taken for entry into force of this Treaty. This Treaty shall enter into force on the thirtieth day from the date of receipt of the later diplomatic note.

2. This Treaty applies to any requests presented after its entry into force even if the relevant conduct occurred before the entry into force of this Treaty.

3. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective States, have signed this Treaty.

DONE IN DUPLICATE at Canberra on this 10th day of April two thousand and twelve in the English and Vietnamese languages, each text being equally authentic.

FOR AUSTRALIA

The Hon Nicola Roxon
Attorney-General

**FOR THE SOCIALIST
REPUBLIC OF VIETNAM**

Mr Pham Quy Ngo
Deputy Minister of Public Security