

No. 47815

**Australia
and
Viet Nam**

Agreement between Australia and the Socialist Republic of Vietnam concerning transfer of sentenced persons. Canberra, 13 October 2008

Entry into force: *11 December 2009 by notification, in accordance with article 16*

Authentic texts: *English and Vietnamese*

Registration with the Secretariat of the United Nations: *Australia, 14 September 2010*

**Australie
et
Viet Nam**

Accord entre l'Australie et la République socialiste du Vietnam relatif au transfert des personnes condamnées. Canberra, 13 octobre 2008

Entrée en vigueur : *11 décembre 2009 par notification, conformément à l'article 16*

Textes authentiques : *anglais et vietnamien*

Enregistrement auprès du Secrétariat des Nations Unies : *Australie, 14 septembre 2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

**AGREEMENT BETWEEN AUSTRALIA AND THE SOCIALIST
REPUBLIC OF VIETNAM CONCERNING TRANSFER OF
SENTENCED PERSONS**

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.
- (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: