

Consular Agreement between Australia and the Socialist Republic of Vietnam

Introduction

- 2.1 Consular arrangements between Australia and the Socialist Republic of Vietnam are currently governed by the multilateral *Vienna Convention on Consular Relations* (VCCR) of 24 April 1963, which Australia ratified on 12 February 1973.¹
- 2.2 The proposed *Consular Agreement between Australia and the Socialist Republic of Vietnam* (Consular Agreement) expands upon some of the provisions of the VCCR by clearly defining the rights and obligations of each Party with respect to consular activities.²
- 2.3 Mr Rod Smith from the Department of Foreign Affairs and Trade (DFAT) advised the Committee that the Consular Agreement is aimed at alleviating some of the difficulties that Australian consular officials have experienced in gaining access to Australian citizens arrested or detained in Vietnam, particularly Vietnamese born Australians or Australians of Vietnamese ethnic origin.³

1 National Interest Analysis (NIA), para. 4 and www.austlii.edu.au/au/other/dfat (10/5/04).

2 NIA, para. 5.

3 Mr Rod Smith, *Transcript of Evidence*, 8 March 2004, pp. 2-3.

Features of the Consular Agreement

2.4 The obligations of the Consular Agreement cover a range of consular activities, namely:

- notification of appointments, arrivals and departures of consular staff (article 2)
- measures to ensure the smooth performance of consular post functions (articles 3)
- facilitation of purchase or lease of consular premises and residences of consular staff (article 4)
- functions that can be undertaken by consular officers (articles 5-9)
- ensuring consular protection and assistance to those with dual nationality (article 10)
- communication and contact with foreign nationals, including procedures concerning the detention of foreign nationals (article 11)
- exchange of information in the event of a death of a national (article 12)
- procedures for the handling of an estate of a deceased national (articles 13)
- protection of the rights of minors or other nationals without the capacity to act on their own behalf (article 14)
- provision for consular officers to render assistance to vessels of the sending State in territorial waters of the receiving State (article 15) including any wrecked vessel, its crew and passengers (article 17)
- advance notification to the consular post in the event that the receiving State begins an investigation of a vessel, or boards a vessel, of the sending State (article 16)
- provisions for fees and charges for consular acts (article 19).⁴

2.5 In addition, article 21 of the Consular Agreement allows for annual consultations between Australia and Vietnam to review consular relations, including any issue of concern to either Party. Parties may also seek consultations on individual consular matters as required

4 NIA, para. 13.

during the year.⁵ Mr Smith advised the Committee that a provision for annual consultations has been very useful in the consular agreement between Australia and China. Specifically:

Those consultations provide a useful opportunity to discuss in a quite formal setting the problems we have in the management of our consular relations with the country concerned.⁶

Detention of foreign nationals

- 2.6 Article 36 of the VCCR entitles an arrested person consular access if he or she requests it, and prescribes that it should be granted 'without delay'.⁷ Australia's procedures for Vietnamese consular officials' access to Vietnamese citizens arrested or detained within Australia are currently in line with article 36 of the VCCR.⁸
- 2.7 Mr Sridhar Ayyalaraju from DFAT advised the Committee that under the VCCR, governments are also required to provide notice to consular officials without delay when a foreign national has been detained.⁹ However, the VCCR does not identify a time limit for notification.¹⁰
- 2.8 The Consular Agreement provides set time frames for consular notification and access. Specifically, consular officials must be notified within three working days if a foreign national is arrested or detained.¹¹ In addition, a consular visit to the detainee must be permitted within two working days thereafter, unless the detainee expressly requests that the consular post is not informed.¹²
- 2.9 The Consular Agreement also details the regularity of consular visits to detained nationals, including guaranteed monthly consular visits and consular representation at a trial.¹³

5 Article 21, *Consular Agreement between Australia and the Socialist Republic of Vietnam*.

6 Mr Rod Smith, *Transcript of Evidence*, 8 March 2004, p. 3.

7 Department of Foreign Affairs and Trade (DFAT), *Submission*, p. 1.

8 DFAT, *Submission*, p. 1.

9 Mr Sridhar Ayyalaraju, *Transcript of Evidence*, 8 March 2004, p. 3.

10 NIA, para. 9.

11 NIA, para. 9 and Mr Sridhar Ayyalaraju, *Transcript of Evidence*, 8 March 2004, p. 3.

12 NIA, para. 9 and Mr Sridhar Ayyalaraju, *Transcript of Evidence*, 8 March 2004, p. 3.

13 NIA, para. 10.

- 2.10 According to the NIA, Parties will also be obliged to provide reasons for the detention of a national and give details of any charges against a detained national.¹⁴

Dual nationality

- 2.11 The Committee was informed that one of the difficulties experienced by Australian consular officials was in relation to access to detained Vietnamese-Australian citizens.¹⁵ This was because dual nationality was not recognised under Vietnamese law.¹⁶
- 2.12 The Consular Agreement reaffirms that any person who possesses an Australian passport, regardless of his or her nationality, is entitled to assistance from Australian consular posts.¹⁷

Entry into force

- 2.13 Under article 22, the Consular Agreement shall take effect 31 days after an exchange of notes whereby the Parties notify the other of the completion of their domestic requirements to give effect to the Agreement.

Implementation

- 2.14 The NIA states that there are 'no foreseeable direct financial costs' to Australia as a result of the Consular Agreement, as all obligations can be carried out by consular staff as part of their normal duties.¹⁸
- 2.15 In addition, no legislative changes will be required as all obligations can be implemented under existing legislation.¹⁹

14 NIA, para. 10.

15 Mr Rod Smith, *Transcript of Evidence*, 8 March 2004, p. 2.

16 NIA, para. 11.

17 NIA, para. 11.

18 NIA, para. 15.

19 NIA, para. 14.

Consultation

- 2.16 The Commonwealth Government consulted with State and Territory Governments, as well as the Vietnamese community in the development of the proposed Consular Agreement.²⁰
- 2.17 The Committee understands that the Vietnamese Community in Australia (VCA) raised a number of concerns with the Agreement, namely dual nationality issues, the mechanism for consultation and consular functions in the event of a deceased estate.²¹
- 2.18 Mr Smith advised the Committee that all of the concerns of the VCA have been 'substantially met'.²² The VCA also advised the Committee that it had no further concerns with the proposed treaty action.²³

Conclusion and recommendation

- 2.19 The Committee agrees with DFAT that the Consular Agreement is practical and will provide a valuable framework for consular relations between Australia and Vietnam. The Committee also believes that it will assist Australian consular authorities in the discharge of their consular rights and duties.

Recommendation 1

The Committee supports the *Consular Agreement between Australia and the Socialist Republic of Vietnam* and recommends that binding treaty action be taken.

20 NIA, paras 16-17 and Consultation Annex.

21 NIA, para. 18.

22 Mr Rod Smith, *Transcript of Evidence*, 8 March 2004, p. 4.

23 Vietnamese Community in Australia, *Submission*, p. 1.