

**DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA**

TREATY BETWEEN

AUSTRALIA

AND

THE PEOPLE'S REPUBLIC OF CHINA

CONCERNING

TRANSFER OF SENTENCED PERSONS

Sydney, 6 September 2007

Not yet in force

[2007] ATNIF 27

TREATY BETWEEN AUSTRALIA AND THE PEOPLE’S REPUBLIC OF CHINA
CONCERNING TRANSFER OF SENTENCED PERSONS

Australia and the People’s Republic of China (hereinafter referred to as “the Parties”);

On the basis of mutual respect for sovereignty and equality and mutual benefit;

Desiring to cooperate in the enforcement of penal sentences; and

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

Have decided to conclude this Treaty and agreed as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Treaty:

- (a) “Transferring Party” means the party in which the sentence was imposed on the person who may be, or has been, transferred;
- (b) “Receiving Party” means the party to which the sentenced person may be, or has been, transferred;
- (c) “sentenced person” refers to a person who has been sentenced by a court or tribunal to imprisonment in the Transferring Party.

ARTICLE 2
GENERAL PROVISIONS

- (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 Treaty.
- (2) The Parties may, in accordance with the provisions of this Treaty, transfer a sentenced person to each other to enforce the sentence imposed against the person in the territory of the Receiving Party.

ARTICLE 3
CENTRAL AUTHORITIES

- (1) The Central Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Treaty.
- (2) The Central Authorities referred to in paragraph (1) of this Article shall be the Australian Government Attorney-General’s Department for Australia and the Ministry of Justice for the People’s Republic of China. Should either Party change its designated Central Authority, it shall notify the other Party of such change in writing through diplomatic channels.

- (3) The Central Authorities shall communicate directly with each other for the purpose of this Treaty.

ARTICLE 4 CONDITIONS FOR TRANSFER

A sentenced person may be transferred only if:

- (a) the conduct on account of which the sentence was imposed against the sentenced person also constitutes an offence under the laws of the Receiving Party;
- (b) the sentenced person is a national of the Receiving Party. In exceptional circumstances both Parties can agree to waive this condition;
- (c) the sentenced person has at least one year remaining to be served at the time of the request for transfer. In exceptional cases, the Parties may agree to a transfer even if the remaining period of time to be served by the sentenced person is less than one year;
- (d) the judgment is final and no further legal proceedings relating to the offence, or any other offence, are pending in the Transferring Party; and
- (e) the Transferring and Receiving Parties and the sentenced person all agree to the transfer. Where in view of age, or physical or mental condition of the sentenced person, either Party considers it necessary, the sentenced person's consent may be given by the person's legal representative. The transfer, including terms relating to the recovery of any costs which may be incurred, must be consented to in writing by the sentenced person or their legal representative.

ARTICLE 5 DECISION TO TRANSFER

Each party may determine at its discretion whether or not to agree to the transfer requested by the other Party.

ARTICLE 6 NOTIFICATION

- (1) The Parties shall endeavour to inform sentenced persons of the substance of this Treaty.
- (2) The sentenced person shall be kept informed in writing of the progress of their application for transfer.

ARTICLE 7 REQUEST AND REPLY

- (1) A sentenced person may apply to either Party for a transfer according to this Treaty. The Party to which the sentenced person has made an application for transfer must notify the other Party in writing of the application.

- (2) A request for transfer may be made by either Party. The requested Party shall promptly inform the requesting Party of its decision whether or not to agree to the requested transfer.
- (3) Requests for, and replies to, transfer shall be made in writing and transmitted through the channel as provided in Article 3.

ARTICLE 8 REQUIRED DOCUMENTS AND INFORMATION

- (1) A request for transfer shall include the following:
 - (a) the name, date and place of birth of the sentenced person;
 - (b) a statement of the nationality of the sentenced person; and
 - (c) the location where the sentenced person is being detained.
- (2) Where a request for transfer has been made, unless it has been refused by either Party, the Transferring Party shall provide the Receiving Party with the following information and documents:
 - (a) a certified copy of the judgment, statement of the facts upon which the conviction and sentence were based, and 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 including any pretrial confinement;
 - (c) details of any request, if any, 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;
 - (d) any corrections and medical reports on the sentenced person, including information about their treatment in the Transferring Party, and any recommendation for their further treatment in the Receiving Party; and
 - (e) a copy of the written application for transfer by the sentenced person.
- (3) The Receiving Party shall provide the Transferring Party with the following information and documents:
 - (a) a statement that the sentenced person is a national of the Receiving Party;
 - (b) a statement that the conditions included in Article 4(a) have been met; and
 - (c) a statement or information describing how the sentenced person's sentence would be enforced by the Receiving Party.
- (4) Either Party shall, if requested and as far as possible, provide the other Party with any relevant documents, statements or information before making a request for transfer or taking a decision on whether or not to agree to a transfer.

ARTICLE 9
CONSENT OF THE SENTENCED PERSON AND VERIFICATION

- (1) The Transferring Party shall ensure that the sentenced person or his or her legal representative voluntarily consents to the transfer with full knowledge of the legal consequences of the transfer; and makes a written declaration confirming that the consent is voluntary and made with full knowledge of the legal consequences of the transfer. The procedure for giving such consent shall be governed by the law of the Transferring Party.
- (2) Where the Receiving Party requests, the Transferring Party shall afford the Receiving Party the opportunity to verify, through an official designated by the Receiving Party, that the sentenced person has consented in accordance with the conditions set out in paragraph (1) of this Article.

ARTICLE 10
DELIVERY OF THE SENTENCED PERSON

Where an agreement is reached on a transfer, the Parties shall determine the time, place in the territory of the Transferring Party, and procedure for the transfer, through consultation through the channels as provided in Article 3.

ARTICLE 11
RETENTION OF JURISDICTION

- (1) The Transferring Party shall retain jurisdiction for the modification or cancellation of convictions and sentences imposed by its courts.
- (2) 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 this Article that results in modification or cancellation of a conviction or sentence imposed by its courts.

ARTICLE 12
CONTINUED ENFORCEMENT OF SENTENCE

- (1) After receiving the sentenced person, the Receiving Party shall continue to enforce the sentence pursuant to the nature and the duration of the sentence determined by the Transferring Party, as if the sentence had been imposed in the Receiving Party.
- (2) If the sentence as determined by the Transferring Party 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 domestic law for a similar offence. When adapting the sentence:
 - (a) the Receiving Party shall be bound by the findings of facts insofar as they appear from the judgment imposed by the Transferring Party;
 - (b) the Receiving Party shall not adapt a penalty of deprivation of liberty to a pecuniary penalty;
 - (c) the adapted sentence shall, as far as possible, correspond with that imposed by the sentence in the Transferring Party;

- (d) the adapted sentence shall be no more severe than that imposed by the Transferring Party in terms of nature or duration;
 - (e) the adapted sentence is not bound by the minimum duration of penalty applicable to a similar offence prescribed by the laws of the Receiving Party; and
 - (f) the period of time served by the sentenced person under a sentence of imprisonment in the Transferring Party shall be deducted.
- (3) When adapting a sentence in accordance with paragraph (2) of this Article, the Receiving Party shall transmit a copy of the legal document on the adaptation to the Transferring Party.

ARTICLE 13
APPLICABLE LAW FOR THE CONTINUED ENFORCEMENT OF SENTENCE

- (1) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the Receiving Party.
- (2) The Receiving Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of the sentenced person's status under the law of the Transferring Party.
- (3) The law of the Receiving Party shall apply to the sentenced person for the reduction of sentence, parole or other relevant measures during enforcement of sentence.
- (4) Either Party may, in accordance with its domestic law, grant a pardon to the sentenced person transferred and shall inform promptly the other Party of the decision through the channel as provided in Article 3.
- (5) The Receiving Party shall terminate enforcement of the sentence as soon as it is informed of any decision by the Transferring Party in accordance with paragraph (4) of this Article to pardon the sentenced person.
- (6) The Receiving Party or the Transferring Party, as appropriate, shall inform the sentenced person in writing of any action or decisions taken under paragraphs (2) to (4) of this Article.

ARTICLE 14
INFORMATION ON ENFORCEMENT OF SENTENCE

The Receiving Party shall provide information to the Transferring Party concerning the enforcement of the sentence if:

- (a) the sentenced person is granted parole;
- (b) the enforcement of the sentence has been completed;
- (c) the sentenced person has escaped from custody or died before the enforcement of the penalty has been completed; or
- (d) the Transferring Party requests a specific statement.

ARTICLE 15
TRANSIT OF SENTENCED PERSONS

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 except where air transportation is used and no landing in the territory of the other party is scheduled.

ARTICLE 16
LANGUAGE

For the purpose of this Treaty, the Parties shall communicate in their official language and provide a translation in the official language of the addressed Party.

ARTICLE 17
EXPENSES

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.

ARTICLE 18
CONSULTATION AND SETTLEMENT OF DISPUTES

- (1) The Central Authorities of the Parties may consult with each other to promote the most effective use of this Treaty and to agree upon such practical measures as may be necessary to facilitate the implementation of this Treaty.
- (2) Any dispute arising out of the interpretation, application or implementation of this Treaty shall be resolved through diplomatic channels.

ARTICLE 19
CERTIFICATION AND AUTHENTICATION

Any documents provided through the Central Authorities in accordance with this Treaty shall not require any form of authentication or certification.

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 the later diplomatic note.
- (2) The Treaty shall also be applicable to the transfer of sentenced persons against whom the sentence was imposed before its entry into force.

- (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 thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Sydney on the sixth day of September two thousand and seven in English and Chinese languages, each text being equally authentic.

For Australia

For the People's Republic of China

.....
Hon Philip Ruddock
Attorney-General

.....
HE Yang Jiechi
Minister of Foreign Affairs

澳大利亚和中华人民共和国 关于移管被判刑人的条约

澳大利亚和中华人民共和国（以下简称“双方”），在相互尊重主权和平等互利的基础上，为开展刑罚执行及被判刑人移管方面的合作，以便被判刑人成功重返社会，决定缔结本条约，并议定下列条款：

第一条 定义

为本条约之目的：

一、“移交方”是指在其境内对可能或已经被移管的人员判处刑罚的一方；

二、“接收方”是指被判刑人可能或已经被移管至其境内的一方；

三、“被判刑人”是指在移交方被法院或法庭判处监禁刑罚的人员。

第二条 一般规定

一、双方承诺根据本条约的规定，就移管被判刑人相互提供最广泛的合作。

二、双方可以根据本条约的规定，相互移管被判刑人，以

便在接收方境内执行对其所判处的刑罚。

第三条 中央机关

一、双方中央机关将根据本条约的规定处理移管请求。

二、本条第一款所述中央机关，在澳大利亚方面系指澳大利亚政府司法部；在中华人民共和国方面系指中华人民共和国司法部。一方如果变更其指定的中央机关，应当通过外交途径书面通知另一方。

三、为本条约之目的，双方中央机关应相互直接联系。

第四条 移管的条件

只有符合下列条件，方可移管被判刑人：

（一）对被判刑人据以判处刑罚的行为，根据接收方法律也构成犯罪；

（二）被判刑人为接收方公民。在例外情况下，双方可同意放弃此项条件；

（三）在提出移管请求时，被判刑人尚未服完的刑期不少于一年。在特殊情况下，即使被判刑人尚需服刑的时间少于一年，双方也可同意移管；

（四）判决为终审判决，且在移交方境内不存在与所涉犯罪或其他犯罪有关的未完结诉讼；

（五）移交方、接收方以及被判刑人均同意移管。但任何一方鉴于被判刑人的年龄、身体或精神状况认为必要时，可由被判刑人的合法代理人表示同意移管。被判刑人或其合法代理人表示同意移管，包括对返还移管费用条件的同意，应采取书面形式。

第五条 移管的决定

任何一方均可自主决定是否同意另一方提出的移管请求。

第六条 通知

- 一、双方均应尽可能将本条约的内容告知被判刑人。
- 二、被判刑人应被书面告知处理其移管申请的进展情况。

第七条 请求与答复

一、被判刑人可依据本条约向任何一方提出移管申请。收到被判刑人移管申请的一方应将该申请书面告知另一方。

二、任何一方均可提出移管请求。被请求方应当将其是否同意移管请求的决定尽快通知请求方。

三、移管的请求与答复均应采取书面形式，并通过本条约第三条规定的途径递交。

第八条 所需文件和信息

一、移管请求应该包括以下内容：

- （一）被判刑人的姓名、出生日期及出生地点；
- （二）对被判刑人的国籍的说明；以及
- （三）被判刑人被关押的场所。

二、如有移管请求，除非任何一方已表示不同意移管，移交方应当向接收方提供下列信息和文件：

（一）经证明无误的判决书副本，对据以定罪量刑的事实所作的说明，以及关于据以定罪的相关法律的说明；

（二）如可行，刑罚的终止日期、被判刑人已服完的刑期，包括审判前羁押的时间；

（三）如果已有国家向移交方提出引渡被判刑人的请求，这些请求的详细情况；或者任何已表示有兴趣引渡被判刑人的国家、或移交方认为可能提出引渡请求的国家的详细情况；

（四）对被判刑人作出的矫正报告和医疗报告，包括被判刑人在移交方接受治疗的情况，以及将在接收方对其进一步治疗的建议；

（五）被判刑人提出移管书面申请的副本。

三、接收方应向移交方提供下列信息和文件：

- （一）关于被判刑人是接收方公民的说明；
- （二）关于第四条第一项所列条件已获满足的说明；以及

（三）关于接收方将如何对被判刑人执行所判刑罚的说明或信息。

四、在提出移管请求或就是否同意移管作出决定之前，任何一方均应依请求尽可能向对方提供有关文件、说明或信息。

第九条 被判刑人的同意及核实

一、移交方应当确保被判刑人或者其合法代理人在完全知晓移管法律后果的情况下自愿表示同意移管，并以书面声明对此予以确认。表示同意移管的程序适用移交方法律。

二、应接收方请求，移交方应当为接收方提供机会，使接收方通过其指定的官员核实被判刑人已按本条前款规定的条件表示同意。

第十条 被判刑人的移交

双方如果均同意移管，应当通过本条约第三条规定的途径，协商确定移交被判刑人的时间、在移交方境内移交的地点及移交方式。

第十一条 管辖权的保留

一、移交方将保留对其法院所作定罪和量刑进行变更或撤

销的管辖权。

二、在被告知移交方根据本条由其法院作出的任何变更或撤销对被判刑人的定罪和量刑的决定后，接收方应立即变更或终止刑罚的执行。

第十二条 刑罚的继续执行

一、接收方在接收被判刑人后，应按照移交方确定的刑罚性质和期限继续执行刑罚，如同该刑罚系由接收方判定一样。

二、如果移交方所判处刑罚的性质或期限不符合接收方的法律，接收方可以将该刑罚调整为本国法律对同类犯罪规定的刑罚。调整刑罚时：

（一）接收方应当受移交方判决书中关于事实认定的约束；

（二）接收方不得将剥夺自由刑调整为财产刑；

（三）调整后的刑罚应当尽可能与移交方所判处的刑罚相一致；

（四）调整后的刑罚在性质上或刑期上不得加重移交方所判处的刑罚；

（五）调整后的刑罚不受接收方法律对同类犯罪所适用的最低刑的约束；以及

（六）应当扣除被判刑人在移交方境内已经服刑的期间。

三、接收方根据本条第二款调整刑罚时，应当及时将调整刑罚的法律文书副本送交移交方。

第十三条 继续执行刑罚适用的法律

一、移管后，继续执行刑罚适用接收方的法律和程序。

二、如果被判刑人依接收方法律属未成年人，则接收方可将该被判刑人以未成年人对待，而不论其在移交方的法律地位。

三、对被判刑人的减刑、假释或其他刑罚执行中的有关措施，适用接收方法律。

四、任何一方均可以根据本国法律，对已被移管的被判刑人给予赦免，并应当及时将此决定通过本条约第三条规定的途径通知另一方。

五、在被告知移交方根据本条第四款作出的任何赦免被判刑人的决定后，接收方应立即终止刑罚的执行。

六、有关接收方或移交方应将依据本条第二款至第四款的规定作出的任何决定或采取的任何措施，书面通知被判刑人。

第十四条 关于执行的情报

有下列情形之一的，接收方应当及时向移交方提供执行刑罚的情报：

（一）被判刑人获得假释；

（二）刑罚已经执行完毕；

- (三) 被判刑人在刑罚执行完毕之前逃脱或死亡；或
- (四) 移交方要求提供特别说明。

第十五条 被判刑人过境

如果任何一方将被判刑人移管至其境外或从其境外移管被判刑人，另一方应遵照其国内法给予合作，为该被判刑人过境提供便利。拟实施移管的一方应就此过境提前通知另一方，除非拟使用航空运输且未计划在另一方降落。

第十六条 语言

为本条约之目的，双方应当使用各自的官方语言进行联系，并附有另一方官方语言的译文。

第十七条 费用

接收方应承担以下费用：

- (一) 移管被判刑人的费用，但完全在移交方境内发生的费用除外；以及
- (二) 移管后继续执行刑罚的费用。

第十八条 协商及争议的解决

一、双方中央机关可相互协商，促使本条约得到最有效的运用，并可就需采取的实际必要措施达成协议，以便于本条约的实施。

二、因本条约的解释、适用或实施产生的争议，应当通过外交途径解决。

第十九条 证明和认证

根据本条约规定经由中央机关转递的任何文件，不应要求任何形式的证明或者认证。

第二十条 生效和终止

一、各方完成为本条约生效所需的一切必要程序后，应通过外交照会通知另一方。本条约自后一份照会发出之日起三十天开始生效。

二、本条约亦适用于本条约生效前被判处刑罚人员的移管。

三、任何一方可以随时通过外交途径，以书面形式通知终止本条约。终止自该通知发出之日后第一百八十天生效。

下列签署人经本国政府适当授权，在本条约上签字，以昭信守。

本条约于二零零七年九月六日在悉尼签订，一式两份，均以英文和中文写成，两种文本同等作准。

澳大利亚代表

总检察长

菲利普·拉多克

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中华人民共和国代表

外交部长

杨洁篪

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