

WHAT TO DO IF YOU DETAIN A FOREIGN NATIONAL

Inform without delay the detained person of their rights to have the relevant consular post or embassy informed of their detention and to request consular assistance.

Tell Detainee: You can ask us to inform your consulate or embassy now or at any time in the future.

Ask detainee: Do you want your consulate or embassy notified of your arrest/detention?

If answer Yes: Notify their consulate or embassy without delay of their detention and request for consular assistance.

Any communication addressed to the consulate/embassy by the detainee should be forwarded without delay.

Allow access for consular officials to visit, converse, correspond, and to arrange legal representation for the detainee, unless expressly opposed by the detainee.

Note: additional notification requirements for Chinese, Vietnamese or Indonesian nationals below.

- **Within 3 calendar days for Chinese nationals**
- **Within 3 working days for Vietnamese and Indonesian nationals.**
- **If the detainee is Silent or Answers No:** Do not inform the consulate or embassy apart from the exception below.

Indonesian nationals only: notify Embassy/ consulate within 3 working days that their national has been detained. No identifying personal information of the detainee should be provided.

PRIVACY AND PERSONAL INFORMATION

‘Personal information’ is defined in the Privacy Act as: “information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.”

Where detainees have not provided consent to notify their embassy or consulate, detaining authorities need to rigorously de-identify personal information. This means ensuring that an individual cannot be reasonably identified from the information provided to an Embassy or Consulate and/or from the broader context in which the information is provided.

For example, if information about the detention of a particular foreign national is already in the media, the aggregate effect of that information and the notification to the consulate or embassy should be considered by the detaining authority when notifying the relevant consulate or embassy.

HOW TO CONTACT FOREIGN CONSULAR OFFICIALS

To locate relevant the nearest embassy/consulate, see the list on the Department of Foreign Affairs and Trade website:
[HTTP://PROTOCOL.DFAT.GOV.AU](http://PROTOCOL.DFAT.GOV.AU)

Please direct any further questions to:
PROTOCOL BRANCH
DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
RG CASEY BUILDING
CANBERRA ACT 2600

OFFICE HOURS: 02 6261 1111
AFTER HOURS EMERGENCIES ONLY: 0418 167 127
PROTOCOL.BRANCH.GOV.AU

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Australian Government

Department of Foreign Affairs and Trade

DETENTION OR DEATH OF A FOREIGN NATIONAL IN AUSTRALIA

September 2016



THIS BROCHURE OUTLINES THE RESPONSIBILITIES OF COMMONWEALTH, STATE AND TERRITORY AGENCIES IN THE CASE OF DETENTION OR DEATH OR INJURY OF A FOREIGN NATIONAL SO AUSTRALIA CAN MEET ITS INTERNATIONAL OBLIGATIONS. THESE OBLIGATIONS EXIST UNDER THE VIENNA CONVENTION ON CONSULAR RELATIONS (VCCR). SPECIFIC ARTICLES OF THE VCCR ARE IMPLEMENTED IN AUSTRALIAN LAW THROUGH THE CONSULAR PRIVILEGES AND IMMUNITIES ACT 1972.

DETENTION OF A FOREIGN NATIONAL

RIGHTS OF A DETAINED FOREIGN NATIONAL

Where a foreign national is detained, the detainee has the right to request consular services from a relevant foreign consular official. Detainees should be provided with adequate interpreting services where necessary and/or required. For interpreting services, call Translating and Interpreting Service (TIS National) on 131 450 (costs may apply).

RIGHTS OF CONSULAR OFFICIALS IN RELATION TO DETAINED FOREIGN NATIONALS

Under the Vienna Convention on Consular Relations 1963, consular officials in Australia have rights if requested by a detained foreign national, to:

- visit the detained foreign national who is in prison, custody or detention
- converse or correspond with the detained foreign national
- arrange for their legal representation

Note: These rights do not apply where a foreign national expressly advises that they do not wish to access consular assistance;

ADDITIONAL REQUIREMENTS FOR CHINESE, VIETNAMESE OR INDONESIAN NATIONALS

Australia has bilateral consular agreements with China and Vietnam and a Memorandum of Understanding with Indonesia that impose specific obligations and requirements on Australian authorities to notify consular officials and to provide them access to their detained nationals.

Authorities are required to do everything reasonable to provide relevant information in response to requests from Chinese, Vietnamese and Indonesian consular officials seeking to ascertain the whereabouts of their nationals, while having regard to Australian privacy legislation (see overleaf).

REQUIREMENTS FOR DETAINED CHINESE NATIONALS

Unless a Chinese national expressly requests otherwise, Australian authorities are required to notify Chinese consular officials of the detention of one of their nationals, within three calendar days. Chinese consular officials are also entitled, under the agreement, to attend the trial or legal proceedings.

- Chinese Embassy in **Canberra**: 0418 452 387
- Chinese Consulate-General, **Sydney**: 0413 647 168
- Chinese Consulate-General, **Melbourne**: 0417 114 584
- Chinese Consulate-General, **Perth**: 0416 132 339
- Chinese Consulate-General, **Brisbane**: 0406 318 178
- Chinese Consulate-General, **Adelaide**: 0423 680 789

REQUIREMENTS FOR DETAINED INDONESIAN NATIONALS

Indonesian consular officials must be notified of the detention of an Indonesian national within three working days, but identifying personal details must not be provided if the individual does not consent. Indonesian consular officials are also entitled, under the Memorandum of Understanding, to attend the trial or legal proceedings if they are open court proceedings and if closed, they may attend if allowed by the court.

- Indonesian Embassy in **Canberra**: 0450 475 094
- Indonesian Consulate-General, **Melbourne**: 0477 007 075
- Indonesian Consulate-General, **Sydney**: 0467 227 487
- Indonesian Consulate-General, **Perth**: 0499 772 978
- Indonesian Consulate, **Darwin**: 0438 843 040

REQUIREMENTS FOR DETAINED VIETNAMESE NATIONALS

Unless a Vietnamese national expressly requests otherwise, Australian authorities are required to notify Vietnamese consular officials of the detention of one of their nationals, within three working days. Vietnamese consular officials are also entitled, under the agreement, to attend the trial or legal proceedings.

For more contact details, see:
[HTTP://PROTOCOL.DFAT.GOV.AU](http://PROTOCOL.DFAT.GOV.AU)

DEATH OR INJURY OF A FOREIGN NATIONAL

NOTIFICATION OF THE DEATH OF A FOREIGN NATIONAL

The authority which is registering the death whether it be police, a coroner or other authority should inform the relevant foreign embassy or consulate of the death without delay and provide a copy of the death certificate upon request. This applies equally to Chinese, Vietnamese or Indonesian nationals.

INJURY OR HOSPITALISATION OF A FOREIGN NATIONAL

Where a foreign national is seriously injured or hospitalised and is incapacitated, it may be appropriate for authorities to contact the person's consulate or embassy if contact cannot be made with next of kin. In such circumstances, we would encourage authorities to contact the person's consulate or embassy as soon as practical. If the appointment of a guardian or trustee is required for the foreign national, the embassy or consulate should be informed.