

# **Diplomatic Privileges and Immunities Regulations (Amendment) 1992 No. 7**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1992 No. 7**

Issued by the Authority of the Minister for Foreign Affairs and Trade

Diplomatic Privileges and Immunities Act 1967

Diplomatic Privileges and Immunities Regulations (Amendment)

Section 15 of the Diplomatic Privileges and Immunities Act 1967 ("the Act") provides that the Governor-General may make regulations necessary or convenient to be prescribed for the carrying out or giving of effect to the Act.

Sub-section 7(1) of the Act provides, inter alia, that Articles 22 and 29 of the Vienna Convention on Diplomatic Relations ("the Vienna Convention") have the force of law in Australia and every external Territory. Articles 22, paragraph 2, and 29 of the Vienna Convention provide:

#### Article 22

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

#### Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Paragraph 7(2)(a) of the Act provides that references in the Vienna Convention to the "receiving State" shall be read as references to Australia, or where the context permits, to every State and Territory.

Australia has international obligations under the Vienna Convention to take appropriate steps to prevent not only violence or disturbance of the peace in relation to a foreign mission but also impairment of its dignity. Situations can arise where, as a consequence of the nature, proximity and duration of a demonstration, even one wholly non-violent in character, steps such as the removal or relocation of material associated with a demonstration may have to be taken if Australia is to properly discharge its international obligations. Regulations to enable such "appropriate steps" to be taken are necessary because, although Section 7 of the Act imposes a duty on the Commonwealth, it does not expressly confer any powers to enable the discharge of that duty, and existing Commonwealth legislation does not explicitly authorise the removal or relocation of material associated with a demonstration outside a diplomatic mission.

The purpose of the Regulations is to amend the Diplomatic Privileges and Immunities Regulations to enable Australia to meet its obligations under the Vienna Convention by empowering the Australian Federal Police, or the Australian Protective Service, to remove or relocate material or objects associated with a demonstration away from mission premises, or the private residence of a diplomat, when the Minister for Foreign Affairs and Trade certifies that such removal or relocation is an "appropriate step" under Articles 22.2 or 29 of the Vienna

Convention to prevent an attack on or disturbance of the peace of, or impairment of the dignity of a mission or diplomat.

Details of the Regulations are set out in the Attachment.

## Attachment

### Diplomatic Privileges and Immunities Regulations (Amendment)

Regulation 1: This regulation provides for the amendment of the principal Regulations, as set out below.

Regulation 2: This Regulation provides definitions for two terms.

- **"prescribed land or premises"** is Crown land that is open to access by the public; and
- **"prescribed object"** is an object or structure on prescribed land within 100 metres of the premises of a mission or a diplomatic residence.

Regulation 3: This regulation inserts two new Regulations, 5A and 5B.

#### **Regulation 5A -**

(1) enables the Minister to issue a certificate stating that in his or her opinion removal of a prescribed object from prescribed land, as described in the certificate, would be an appropriate step within the meaning of Article 22 or 29 of the Vienna Convention on Diplomatic Relations [a copy of the full text of which is set out in the Schedule to the **Diplomatic Privileges and Immunities Act 1967**];

(2) specifies the matters, amongst others, to which the Minister is required to have regard in deciding whether to issue a certificate, namely, the nature of the object, how long it has been on prescribed land or premises, and how close it is to a diplomatic mission or residence;

(3) provides that a certificate takes effect from the date it is issued, unless a later time is specified in it;

(4) provides that a certificate is effective for 30 days;

(5) provides that a further certificate may be issued in respect of matter stated in an existing or earlier certificate; and

(6) requires the Minister to table a copy of a certificate in Parliament within 15 sitting days.

#### **Regulation 5B -**

(1) defines **"prescribed officer"** to mean a member of a police force or the Australian Protective Service;

(2) enables a prescribed officer, with such assistance as the officer reasonably believes is necessary, and with such force as is reasonable and necessary, to remove a prescribed object from prescribed land in accordance with the certificate;

(3) requires that a prescribed officer must not remove a prescribed object from prescribed land before giving a person who is apparently in control of the object, or who placed the object, a reasonable opportunity to relocate the object to a place where it may be lawfully placed, or that is more than 100 metres from the mission referred to in the certificate or a residence of a diplomatic agent of the mission;

(4) enables a prescribed officer to retain removed prescribed objects for 7 days; and

(5) requires the prescribed officer, after 7 days, to take reasonable steps to return an object to those who placed it on prescribed land or premises, or who were apparently in control of it before it was removed.

Regulation 4: This Regulation inserts a new Schedule into the Regulations, setting out the form for a certificate to be signed by the Minister.