

Diplomatic Privileges and Immunities Regulations (Amendment) 1992 No. 41

EXPLANATORY STATEMENT

STATUTORY RULES 1992 No. 41

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. Specific authority in law to enable such "appropriate steps" to be taken is 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.

Accordingly, amendments to the Diplomatic Privileges and Immunities Regulations, being Statutory Rules 1992 No.7, were made by the Governor-General in Council 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 certified that such removal or relocation was an "appropriate step" under Articles 22.2 or 29 of the Vienna Convention to prevent an attack on or disturbance of the peace, or impairment of the dignity, of a mission or diplomat.

In the light of comments made by Mr Justice Ryan of the Federal Court of Australia concerning the validity of Statutory Rules 1992 No.7, the amendment proposed puts beyond doubt that the power of the Minister for Foreign Affairs and Trade to certify that removal or relocation of objects is an "appropriate step" to give effect to Articles 22.2 or 29 arises only when a disturbance of the peace, or impairment of the dignity, of a mission or diplomatic agent is in fact occurring or threatened. other ancillary amendments are also proposed.

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 defines the word "certificate" to mean a certificate referred to in subregulation 5A(1).

Regulation 3: This Regulation amends Regulation 5A of the principal Regulations as follows:

3.1 The words "in his or her opinion" are omitted from subregulation 5A(1).

3.2 The words "within the meaning of" are omitted from subregulation 5A(1) and the words "to give effect toll substituted.

3.3 A new subregulation 5A(2)(d) is added to subregulation 5A(2) which reads:

"(d) whether a measure other than removal of the object would give effect to the special duty of Australia under Article 22 of the Convention."

Regulation 4: This Regulation amends subregulation 5B of the principal Regulations by omitting subregulation 5B(3)(d) and substituting:

"(d) that is not on prescribed land or premises described in the certificate."

Regulation 5: This Regulation amends the Schedule to the principal Regulations as follows:

5.1 The words "in my opinion" are omitted from the Schedule.

5.2 The words "within the meaning of" are omitted from the schedule and the words "to give effect to" substituted.