

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 85

Issued by the Authority of the Minister for Foreign Affairs

International Organisations (Privileges and Immunities) Act 1963

International Development Law Organization (Privileges and Immunities) Regulations 2007

The International Development Law Organization (IDLO) is an organisation that seeks to strengthen the rule of law and good governance in developing countries and countries in transition, including the Asia-Pacific region. Australia is a member country of IDLO and became a party to the Agreement for the Establishment of IDLO on 10 July 2000.

The Regulations give effect to a Memorandum of Understanding (MoU) between the Australian Government and IDLO, signed on 28 June 2005, on the establishment and operation of IDLO's Asia Pacific Regional Center (APRC) in Australia. The APRC was opened in late 2000. Under the MoU, Australia committed to provide limited, non-financial, privileges and immunities to IDLO.

The Regulations accord international organisation status to IDLO and also extend certain non-financial privileges, for example exemption from currency and exchange restrictions, and immunities, for example immunity from legal process to IDLO and to its staff. The proposed Regulations would also clarify that Australian authorities may enter IDLO premises in the case of fire or other emergency requiring immediate protective action.

Details of the Regulations are set out in the Attachment.

All relevant Ministers and Commonwealth Government Departments were consulted prior to the drafting of these Regulations. The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required as "the proposed amendments do not have a direct or significant indirect impact on business and do not restrict competition".

Details of the *International Development Law Organization (Privileges and Immunities) Regulations 2007*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *International Development Law Organization (Privileges and Immunities) Regulations 2007*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Definitions

This regulation provides for a number of definitions used throughout the Regulations.

Regulation 4 – Application of Act to IDLO

This regulation provides that IDLO is an international organisation to which the *International Organisations (Privileges and Immunities) Act 1963* (the Act) applies.

Regulation 5 – Juridicial personality and legal capacity of IDLO

This regulation confers legal personality and capacities on IDLO. In particular, it provides that IDLO is a body corporate with perpetual succession, is capable (in its corporate name) of entering into contracts and of annexing, holding and disposing of real and personal property and of suing and being sued.

Regulation 6 – Privileges and immunities of IDLO

This regulation provides that IDLO has the privileges and immunities specified in the First Schedule to the Act except for items 6, 7, 8 and 10 of that Schedule. The general privileges and immunities accorded to IDLO include: immunity from suit and legal processes; exemption from currency and other restrictions; inviolability of property, assets and archives; and exemption from prohibitions or restrictions on the importation or exportation of goods imported or exported for official use. The privileges and immunities IDLO is not entitled to include: exemption from duties on the importation or exportation of goods imported or exported for official use; and exemption from the liability to pay or collect taxes.

Subregulation (2) limits IDLO's immunity from suit and other legal processes. For example, IDLO is not immune from civil proceedings in relation to contracts entered into for the supply of goods or services, or from proceedings with respect to the commission of an offence relating to motor traffic, motor vehicles or the use of a motor vehicle.

Subregulation (3) provides that Australian authorities may enter, without the consent of the Director, IDLO premises in the case of fire or other emergency requiring immediate protective action.

Regulation 7 – Privileges and immunities of Director-General

This regulation provides, for the purposes of paragraph 6(1)(b) of the Act, that the office of the Director-General is a high office. Subregulation (2) provides that the Director-General, unless he or she is a citizen or permanent resident of Australia, has the privileges and immunities mentioned in Part I of the Second Schedule to the Act. This means the Director-General of IDLO is entitled to the same broad privileges and immunities as are accorded to diplomatic agents, for example, immunity from jurisdiction and arrest. However, the Director-General is not entitled to any financial privilege or immunity, for example, exemption from dues, taxes or customs duties.

Where the Director-General is a citizen or permanent resident of Australia, subregulation (3) provides that he or she only has immunity from suit and other legal processes in respect of acts and things done in his or her official capacity as Director-General.

Subregulation (4) provides that a person who has ceased to hold the office of Director-General has the privileges and immunities mentioned in Part II of the Second Schedule to the Act, that is, immunity from suit and other legal process in respect of acts and things done in his or her capacity as Director-General.

Regulation 8 – Privileges and immunities of Representatives

Subregulation (1) provides that, subject to subregulations (4) and (5), a Representative, other than the Asia Regional Representative and any representative to whom subregulation (2) applies, has the following privileges and immunities:

- a) the privileges and immunities specified in items 1 to 4 and 6 of Part I of the Third Schedule to the Act, including immunity from personal arrest and detention, immunity from suit and from other legal process in respect of acts and things done in an official capacity and exemption from currency or exchange restrictions;
- b) exemption from inspection of personal baggage;
- c) exemption from the application of laws relating to the registration of aliens and the obligation to perform national service; and
- d) the same repatriation facilities in a time of international crisis as are accorded to diplomatic agents.

The privileges and immunities specified in paragraph (d) also apply to spouses and dependent relatives of Representatives.

Subregulation (2) provides that a Representative who is a citizen or a permanent resident of Australia has immunity from suit and other legal processes in respect of words written or spoken, and things done, in the exercise of his or her official functions.

Subregulation (3) provides that, subject to subregulation (5), a person who has ceased to be a Representative has the privileges and immunities specified in Part II of the Third Schedule to the Act, that is, immunity from suit and other legal process in respect of acts and things done in his or her capacity as a Representative.

Subregulation (4) provides that immunity from arrest and detention under subregulation (1) does not extend to a Representative found committing, attempting to commit or having just committed a serious offence.

Subregulation (5) limits a Representative's immunity from suit and other legal processes. For example, a Representative is not immune from civil or administrative proceedings arising out of death, damage, or personal injury resulting from an accident involving a motor vehicle owned or driven by him or her.

Regulation 9 – Privileges and immunities of Asia Regional Representative, Director and staff members

Subregulation (1) provides that, subject to subregulation (5), the Asia Regional Representative, the Director and members of the staff of the Asia-Pacific Regional Center (APRC) where they are not citizens or permanent residents of Australia, have the privileges and immunities specified in Part I of the Fourth Schedule of the Act other than items 2 and 3 of that Part. This means that the Asia Regional Representative, the Director and staff of the APRC are, for example, immune from suit and other legal process in respect of acts and other things done in an official capacity and exempt from currency and exchange restrictions but are not exempt from paying income tax. Subregulation (1) also provides that in such cases the Asia Regional Representative, the Director and APRC staff and their spouses are exempt from the application of laws relating to the registration of aliens.

Subregulation (2) provides that, subject to subregulations (5) and (6), where the Asia Regional Representative, the Director and APRC staff are Australian citizens or permanent residents, they have the privileges and immunities mentioned in items 1, 4 and 6 of Part I of the Fourth Schedule to the Act. This includes immunity from suit and other legal process in respect of acts and things done in an official capacity and exemption from the obligation to perform national service. Subregulation (2) also provides that in such cases the Asia Regional Representative, the Director and APRC staff and their spouses are exempt from the application of laws relating to the registration of aliens.

Subregulation (3) specifies the persons covered by this regulation.

Subregulation (4) provides that, subject to subregulation (5), a person who has ceased to be the Asia Regional Representative, the Director or a member of the staff of the APRC has the privileges and immunities specified in Part II of the Fourth Schedule to the Act, that is immunity from suit and other legal process in respect of acts and things done in an official capacity.

Subregulation (5) limits the immunity of the Asia Regional Representative, the Director and APRC staff from suit and other legal processes. They are not, for example, immune from civil or administrative proceedings arising out of death, damage, or personal injury resulting from an accident involving a motor vehicle owned or driven by him or her or from civil proceedings in relation to debts due to the Commonwealth.

Subregulation (6) provides that a staff member who is a citizen or permanent resident of Australia is only exempted from the obligation to perform national service if the staff member's name is on a list compiled by the Director and approved by the Minister.

Regulation 10 – Privileges and immunities of technical experts

Subregulation (1) provides that, subject to subregulation (4), a technical expert who is not a citizen or permanent resident of Australia has the privileges and immunities specified in Part I of the Fifth Schedule to the Act, other than items 2A and 4 of the Part. This means that a technical expert has immunity from arrest or detention and immunity from suit and other legal process in respect of acts and things done in his or her capacity as a technical expert but is not exempt from income tax.

Subregulation (2) provides that, subject to subregulation (4), a technical expert who is a citizen or permanent resident of Australia has the privileges and immunities mentioned in items 2 and 3 of Part I of the Fifth Schedule to the Act, that is, immunity from suit and other legal process in respect of acts and things done in his or her capacity as a technical expert and inviolability of papers and documents.

Subregulation (3) provides that, subject to subregulation (4), a person who has ceased to be a technical expert has the privileges and immunities mentioned in Part II of the Fifth Schedule to the Act, that is immunity from suit and other legal process in respect of acts and things done in his or her capacity as a technical expert.

Subregulation (4) limits the immunity from suit and other legal processes of technical experts. Technical experts are not, for example, immune from civil or administrative proceedings arising out of death, damage, or personal injury resulting from an accident involving a motor vehicle owned or driven by him or her or from civil proceedings in relation to debts due to the Commonwealth.

Regulation 11 – Emblem of IDLO

This regulation provides that each emblem depicted in Schedule 1 is an official emblem of IDLO for the purposes of paragraph 12(5)(b) of the Act.

Regulation 12 – Waiver of privileges and immunities

This regulation provides that IDLO may waive a privilege or immunity to which a Representative (other than the Asia Regional Representative) or the Director is entitled because of the Act or these Regulations. This regulation also provides that the Director may waive a privilege or immunity to which IDLO or a person, other than the Asia Regional Representative, is entitled.

Regulation 13 – Privileges and immunities subject to quarantine laws etc

This regulation provides that nothing in the Regulations affects the operation of any law of the Commonwealth, a State or a Territory relating to immigration, health, quarantine or public order or restricting the importation into, or exportation from, Australia or that State or Territory of any animals, plants or goods. This regulation does not prejudice any immunity from suit or other legal process conferred by the Regulations.

Schedule 1 – Official emblems

The designs of the official emblems of IDLO are set out in this Schedule.