



International Organisations (Privileges and Immunities) (International Committee of the Red Cross) Regulation 2013

Select Legislative Instrument No. 237, 2013

I, RADM Kevin Scarce AC CSC RANR, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *International Organisations (Privileges and Immunities) Act 1963*.

Dated 08 November 2013

Kevin Scarce
Administrator

By His Excellency's Command

Julie Bishop
Minister for Foreign Affairs

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Part 1—Preliminary

1 Name of regulation

This regulation is the *International Organisations (Privileges and Immunities) (International Committee of the Red Cross) Regulation 2013*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the *International Organisations (Privileges and Immunities) Act 1963*.

4 Definitions

(1) In this regulation:

Act means the *International Organisations (Privileges and Immunities) Act 1963*.

child: without limiting who is a child of a person for the purposes of this regulation, someone is the child of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

ICRC means the International Committee of the Red Cross.

ICRC Arrangement means the Arrangement Between the Government of Australia and the International Committee of the Red Cross (“ICRC”) on a regional headquarters in Australia, done at Canberra on 24 November 2005 (a copy of the text of which is set out in Schedule 1).

taxable supply has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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tax invoice has the meaning given by section 29-70 of the *A New Tax System (Goods and Services Tax) Act 1999*.

- (2) For the purposes of this regulation, relationships (including the relationship of being family or being relatives) are taken to include the following (without limitation):
- (a) relationships between de facto partners;
 - (b) relationships of child and parent that arise if someone is the child of a person because of the definition of **child** in subsection (1);
 - (c) relationships traced through relationships mentioned in paragraphs (a) and (b).

Part 2—International Committee of the Red Cross

Division 1—Privileges and immunities of the ICRC

5 Application

For subsection 9D(1) of the Act, this Division confers privileges and immunities upon the ICRC.

6 Privileges and immunities

Inviolability of premises, archives and documents

- (1) The following are inviolable:
 - (a) the ICRC's premises;
 - (b) the archives of the ICRC;
 - (c) all documents held by, or belonging to, the ICRC.

Immunity from legal process

- (2) The ICRC, and the property and assets of the ICRC (regardless of who holds the assets or property), have immunity from any kind of legal process, other than a suit or other legal process for:
 - (a) recovery of damages for any damage, injury or death resulting from an accident involving a motor vehicle owned or operated on behalf of the ICRC; or
 - (b) any contract entered into by the ICRC for the supply of goods or services; or
 - (c) any loan, or other transaction for the provision of finance, by or to the ICRC; or
 - (d) any contract of guarantee or indemnity to which the ICRC is a party; or
 - (e) a counter-claim made against the ICRC by a party to proceedings instituted by the ICRC; or
 - (f) for the attachment, in accordance with a final order of a court, of any amount payable as salary, wages or other

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remuneration by the ICRC to any person who holds an office in the ICRC or any expert assisting the ICRC.

- (3) Subsection (2) applies whether the property or an asset of the ICRC is held by the ICRC or another person.
- (4) The ICRC may waive the immunity mentioned in subsection (2).

Immunity from interference

- (5) The property and assets of the ICRC have immunity from search, seizure, requisition, confiscation, expropriation and any other form of interference.

Privileges and immunities relating to customs duties, import and export restrictions, and indirect tax

- (6) The ICRC is exempt from customs duties and indirect tax, and has immunity from restrictions and prohibitions on the import, export or transit through Australia of:
 - (a) articles (including ICRC publications and audio-visual materials) for official use; and
 - (b) articles intended for ICRC assistance programmes within Australia or another country.
- (7) Subsection (6) does not affect the application of:
 - (a) any law with respect to quarantine; or
 - (b) any law that prohibits or restricts the importation into, or the exportation from, Australia of any animals, plants or goods.
- (8) Subsection (7) does not prejudice any immunity from suit or from civil or criminal process conferred by this regulation.
- (9) The ICRC's privileges in relation to indirect tax are limited to:
 - (a) the exemption conferred by section 11B of the Act; and
 - (b) concessions under section 11C of the Act in relation to acquisitions mentioned in Division 4.

Immunity from financial restrictions

- (10) The ICRC has immunity from laws and regulations in relation to exchange control and related matters, and may, while carrying out its activities:
- (a) hold funds, currency of any kind and other financial assets, and operate accounts in any currency; and
 - (b) transfer its funds or currency to, from and within Australia, and convert any currency held by it into any other currency.

Privileges and immunities relating to communications

- (11) The ICRC's official mail and other official communications and correspondence must receive treatment that is no less favourable than that given to any intergovernmental organisation or diplomatic mission in Australia in relation to priorities, rates, taxes, fees and surcharges.
- (12) The ICRC's official communications and correspondence to and from the ICRC's premises must not be censored.
- (13) The confidentiality of ICRC reports, correspondence and other communications must be respected, and the contents of these reports, communications and other correspondence must not be:
- (a) divulged to persons or organisations other than the persons for whom they are intended; or
 - (b) used in the course of legal proceedings;
- without prior written authorisation from the ICRC.
- (14) The ICRC may use all appropriate means of communication, including electronic communication, and has the right to use codes or cipher for its official communications and correspondence.
- (15) The ICRC has the right to dispatch and receive correspondence and other communications by courier or in sealed bags, with the same privileges, immunities and facilities as diplomatic couriers and bags.
- (16) The ICRC may, in compliance with applicable Australian laws:
- (a) operate a corporate network between its offices within and outside Australia for voice and data services; and

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- (b) install and operate in Australia point-to-point telecommunication facilities and other communication and transmission facilities as may be necessary to facilitate communications with the ICRC's premises within and outside Australia.

Division 2—Privileges and immunities of delegates of ICRC

7 Application

For subsection 9D(1) of the Act, this Division confers privileges and immunities upon:

- (a) a Delegate of the ICRC, in relation to acts and things done in the Delegate's capacity as a Delegate, including after he or she has ceased to be a Delegate; and
- (b) a family member of the Delegate.

8 Privileges and immunities

Immunity from legal process

- (1) The Delegate has immunity from suit and other legal process (including being called as a witness).

Immunities and privileges relating to importation and exportation

- (2) The Delegate has the right to:
 - (a) import his or her personal effects duty free when first taking up a post in Australia; and
 - (b) export his or her personal effects duty free when leaving Australia on the termination of his or her function.

Privileges and immunities in time of international crisis

- (3) The Delegate has repatriation facilities in a time of international crisis that are no less favourable than those given to a diplomatic agent in a time of international crisis.

Privileges in relation to exchange

- (4) The Delegate has privileges in relation to exchange facilities that are no less favourable than those enjoyed by a member, of comparable rank, of a diplomatic mission.

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Immunity from taxation on salaries and emoluments

- (5) The Delegate has immunity from taxation on the salaries and emoluments received from the ICRC.
- (6) However, if the Delegate is an Australian citizen or permanent resident of Australia who is employed by the ICRC in Australia, the Delegate does not have immunity from taxation on salaries, fees and allowances received from the ICRC.

Immunity from national service obligations

- (7) If the Delegate is not an Australian citizen or permanent resident of Australia, the Delegate has immunity from national service obligations.
- (8) If a member of the Delegate's family is not an Australian citizen or permanent resident of Australia, the member has immunity from national service obligations.
- (9) If:
 - (a) the Delegate, or a member of the Delegate's family, is:
 - (i) an Australian citizen or permanent resident of Australia; and
 - (ii) called for national service; and
 - (b) in the opinion of the ICRC, serious disruption to essential ICRC operations may occur if the Delegate or the member performs the national service at a particular time;deferment from the national service must be granted if this is possible.

Division 3—Privileges and immunities of representatives of the ICRC on temporary mission

9 Application

For subsection 9D(1) of the Act, this section confers privileges and immunities upon:

- (a) a representative of the ICRC, while on temporary mission in Australia, in relation to acts and things done:
 - (i) in the representative's capacity as a representative, including after he or she has ceased to be a representative; and
 - (ii) regardless of whether the act or things are done in Australia or elsewhere; and
- (b) a family member of the representative.

10 Privileges and immunities

Immunity from legal process

- (1) The representative has immunity from suit and other legal process (including being called as a witness).

Privileges and immunities in time of international crisis

- (2) The representative has repatriation facilities in a time of international crisis that are no less favourable than those given to a diplomatic agent in a time of international crisis.

Privileges in relation to exchange

- (3) The representative has privileges in relation to exchange facilities that are no less favourable than those enjoyed by a member, of comparable rank, of a diplomatic mission.

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Division 3 Privileges and immunities of representatives of the ICRC on temporary mission

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Immunity from national service obligations

- (4) If the representative is not an Australian citizen or permanent resident of Australia, the representative has immunity from national service obligations.
- (5) If a member of the representative's family is not an Australian citizen or permanent resident of Australia, the member has immunity from national service obligations.
- (6) If:
 - (a) the representative, or a member of the representative's family, is:
 - (i) an Australian citizen or permanent resident of Australia; and
 - (ii) called for national service; and
 - (b) in the opinion of the ICRC, serious disruption to essential ICRC operations may occur if the representative or the member performs the national service at a particular time; deferment from the national service must be granted if this is possible.

Division 4—Indirect Tax Concession Scheme

11 Acquisitions

- (1) For paragraph 11C(1)(a) of the Act, an acquisition of any of the following by the ICRC, on a single tax invoice for a taxable supply of at least \$200 (including indirect tax), is covered by this regulation:
 - (a) mail services in relation to the ICRC's official mail and other official communications and correspondence mentioned in subsection 6(11);
 - (b) telecommunications services in relation to the ICRC's official mail and other official communications and correspondence mentioned in subsection 6(11).
- (2) However, an acquisition by the ICRC is covered by this regulation only if, at the time of the acquisition, it was intended for the official use of the ICRC.

12 Conditions

- (1) For paragraph 11C(3)(a) of the Act, the amount mentioned in subsection 11C(1) of the Act is payable only if the following conditions are satisfied:
 - (a) the person who acquired the services is subject to an agreement in writing between the ICRC and the Commonwealth to repay to the Commonwealth the amount worked out under subsection (2) if the person assigns the services to another person (except to another person entitled to an indirect tax concession under this regulation or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory;
 - (b) if the person has breached a previous agreement under paragraph (a)—the person complies with any written requirements, including a requirement to give security, that the Minister considers necessary to ensure that the person complies with the agreement.

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- (2) For paragraph (1)(a), the amount to be repaid is the amount paid under section 11C of the Act in relation to the acquisition.
- (3) The amount mentioned in subsection 11C(1) of the Act is not payable if:
 - (a) an amount was payable for a similar acquisition; and
 - (b) the Minister tells the person in writing that, in his or her opinion, the person's reasonable needs were met by that acquisition.
- (4) In this regulation:
person includes the ICRC.

13 Claim for payment

A claim for payment under section 11:

- (a) must be signed by, or for, the ICRC; and
- (b) must be sent with the tax invoice for the acquisition; and
- (c) must be sent to the Australian Taxation Office; and
- (d) may only be sent:
 - (i) with another claim; or
 - (ii) at least 3 months after another claim from the ICRC is sent.

14 Manner of payment

For paragraph 11C(3)(b) of the Act, the amount is to be paid to a single recipient, or an account, nominated by, or for, the ICRC.

Division 5—Miscellaneous

15 When Divisions 1 and 2 do not apply

- (1) The privileges and immunities conferred in Divisions 1 and 2 are conferred in the interest of the ICRC, and not for the personal benefit of individuals.
- (2) A person mentioned in Division 1 or 2 has a duty to obey Australian law.
- (3) A privilege or immunity in Division 1 or 2 does not apply if the ICRC considers that:
 - (a) the privilege or immunity would impede the course of justice; and
 - (b) the purpose for which the privilege or immunity was conferred would not be prejudiced.
- (4) In addition to subsection (3), a privilege or immunity conferred on a person mentioned in Division 2 does not apply if, in the opinion of the ICRC:
 - (a) the immunity would impede the course of justice; and
 - (b) the interests of the ICRC would not be prejudiced if the privilege or immunity did not apply.

16 Cooperation with Australia

- (1) The ICRC must cooperate at all times, and take every measure, to prevent any form of abuse of the privileges and immunities mentioned in this regulation.
- (2) The ICRC and its personnel must respect Australian law:
 - (a) before they enter Australia, so far as Australian law is relevant; and
 - (b) from the moment they arrive in Australia and may benefit from the protection of Australian law.
- (3) The ICRC must inform Australian authorities of:

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- (a) arrivals in and departures from Australia of ICRC personnel;
and
 - (b) the titles and functions of ICRC personnel working in
Australia.
- (4) An ICRC Delegate or an ICRC representative on temporary mission in Australia must hold a document called an “Identity document and commission”, attesting to the holder’s status as an ICRC staff member.
- (5) Subsection (4) does not remove the requirement for the Delegate or representative to hold an official or personal passport issued from the delegate’s or representative’s country of residence as evidence of identity.
- (6) The Delegate or representative must:
- (a) hold a valid visa in order to travel to, enter and remain in
Australia; and
 - (b) comply with any visa restrictions or conditions.

17 Legal status and juridical personality of the ICRC

For subsection 9D(2) of the Act, the ICRC has juridical personality and such legal capacities as are necessary for the exercise of its powers and the performance of its functions.

Schedule 1—Arrangement between the Government of Australia and the International Committee of the Red Cross (“ICRC”) on a regional headquarters in Australia

Note: See the definition of *ICRC Arrangement* in section 4.

The Government of Australia and the International Committee of the Red Cross (“the Parties”)

Considering the work done by the ICRC in providing, without discrimination, protection and assistance with a view to relieving human suffering,

Bearing in mind the wish expressed by the ICRC to establish a delegation to carry out the humanitarian tasks entrusted to it under the 1949 Geneva Conventions and the 1977 Additional Protocols, to which Australia is a party, and the Statutes of the International Red Cross and Red Crescent Movement,

Have reached the following understandings:

1. Status of the ICRC

The status of the ICRC in Australia will be comparable to that of an intergovernmental organisation.

2. Juridical Personality

The Government of Australia will confer upon the ICRC juridical personality and such legal capacities as are necessary for the exercise of the powers, and the performance of the functions, of the organisation.

3. Immunity of the ICRC, its Property and Assets

1. The ICRC, its property and assets, wherever located and by whomsoever held, will enjoy immunity from every form of legal process, except insofar as in any particular case the ICRC has expressly waived its immunity.

2. The immunity from suit and from other legal process conferred by paragraph 3.1 on the ICRC does not extend to immunity from a suit or other

legal process:

- (a) for the recovery of damages in respect of any damage, injury or death resulting from an accident in which a motor vehicle owned by, or operated on behalf of, the ICRC was involved;
- (b) in relation to:
 - (i) any contract entered into by the ICRC for the supply of goods or services;
 - (ii) any loan, or other transaction for the provision of finance, by or to the ICRC; or
 - (iii) any contract of guarantee or indemnity to which the ICRC is a party;
- (c) by way of, or in relation to, a counter-claim made against the ICRC by a party to proceedings instituted by the ICRC; or
- (d) in respect of the attachment, in accordance with a final order of a Court, of any amount payable as salary, wages or other remuneration by the ICRC to any person who holds an office in the ICRC or any expert assisting the ICRC.

4. Inviolability of ICRC Premises, Property and Assets

1. The premises of the ICRC will be inviolable. The property and assets of the ICRC, wherever located and by whomsoever held, will be immune from search, requisition, confiscation, or expropriation.
2. No authorities of the Government of Australia will enter the premises of the ICRC to perform any duties therein without the consent of, and under conditions agreed to by, the ICRC. Such consent will however be deemed to have been provided in the case of fire or other emergency requiring immediate protective action,

5. Inviolability of ICRC Archives

The ICRC’s archives and, in general, all documents belonging to it or held by it, will be inviolable, wherever located.

6. Communications

1. The ICRC will enjoy in Australia for its official communications treatment not less favourable than that accorded by the Government to any other international organisation or diplomatic mission, in the matter of priorities, rates
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and surcharges, taxes, fees and surcharges on mail, cables, telegrams, telexes, radiograms, telefax, telephone and other means of communications, apparatus licence taxes and charges, and press rates for information to the press and radio.

2. All official correspondence and other official communications to and from the ICRC premises by whatever means or in whatever form transmitted will be immune from censorship.

3. The ICRC will have the right in Australia to use codes and to dispatch and receive correspondence and other communications either by courier or in sealed bags which will have immunities and privileges not less favourable than those accorded to diplomatic couriers and bags.

4. Subject to compliance with applicable Australian laws and regulations, the ICRC may operate a corporate network between its offices within and outside Australia for voice and data services and may install and operate in Australia point-to-point telecommunication facilities and other communication and transmission facilities as may be necessary to facilitate communications with the ICRC's premises both from within and outside Australia.

7. Financial Resources of the ICRC

1. The ICRC may hold national or foreign currency and other financial assets, and operate accounts in any currency, without being subject to the laws and regulations governing exchange control and related matters.

2. The ICRC may freely transfer funds in national or foreign currency to, from and within the country, and convert such assets freely into other currencies.

8. Exemption from Customs Duties

1. The ICRC will be exempt from customs duties or any equivalent charge and from restrictions and prohibitions on the import, export or transit through Australia of articles (including ICRC publications and audio-visual materials) for official use and of articles intended for ICRC assistance programmes within Australia or in another country.

2. Nothing in this Arrangement affects the application of any law of the Commonwealth or of a Territory of the Commonwealth relating to quarantine, or prohibiting or restricting the importation into, or the exportation from, Australia or that Territory, as the case may be, of any animals, plants or goods but this paragraph does not prejudice the immunity from suit or from civil or criminal process conferred by this Arrangement.

9. Status of Delegates of the ICRC

Schedule 1 Arrangement between the Government of Australia and the International Committee of the Red Cross (“ICRC”) on a regional headquarters in Australia

1. In respect of acts and things done in his or her capacity as a Delegate of the ICRC, a Delegate will be immune from suit and from other legal process and, for the avoidance of doubt, may not be called as witness in respect of acts and things done in his or her capacity as a Delegate, even after he or she has left the services of the delegation.
2. Delegates of the ICRC and their families will be exempt for the application of laws relating to national service obligations. Such exemption will not, however, apply to nationals of Australia. Should Delegates who are nationals of Australia be called for national service, the Government will endeavour to grant deferment when, in the opinion of the ICRC, serious disruption to essential ICRC operations may occur.
3. The ICRC will inform the competent authorities of arrivals in and departures from the country, and of the titles and functions of staff working in Australia.
4. When first taking up a post in Australia, Delegates of the ICRC will have the right to import their personal effects duty free, and to export their personal effects duty free when leaving Australia on the termination of their function,
5. In the event of an international crisis, the Delegates of the ICRC will be granted repatriation facilities like those accorded to a diplomatic agent.
6. Delegates of the ICRC will benefit from the same privileges in respect of exchange facilities as are accorded to the members, of comparable rank, of diplomatic missions.
7. Delegates of the ICRC will be exempted from taxation on salaries and emoluments received from the ICRC. However, Australian citizens and permanent residents of Australia who are employed by the ICRC in Australia will not be exempted from taxation on salaries and emoluments received from the ICRC.
8. The ICRC and its personnel will respect the laws and regulations in force in Australia, as maybe relevant before they enter, and from the moment they arrive in the country and may benefit from their protection.
9. The privileges, immunities, exemptions and facilities accorded in this Arrangement are granted in the interest of the ICRC and not for the personal benefit of the individuals themselves. Persons accorded privileges and immunities by way of this Arrangement are under a duty to obey the laws and regulations of Australia. The ICRC will waive the immunity accorded to any person if, in its opinion, such immunity would impede the course of justice and the waiver would not prejudice the purposes for which the immunities are

accorded.

10. The ICRC will take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Arrangement are not abused and for this purpose will establish such rules and regulations as it may deem necessary and expedient. There will be consultation between the Government and the ICRC, should the Government consider that an abuse has occurred.

10. ICRC Representatives on Temporary Mission

Representatives of the ICRC on temporary mission in Australia will, in respect of acts and things done in their capacity as such a representative, enjoy the same privileges and immunities as outlined in sub-paragraphs (1), (2), (5) and (6) of paragraph 9 of this Arrangement.

11. Confidentiality of ICRC Communications

The Government of Australia undertakes to respect the confidentiality of ICRC reports, correspondence and other communications. This includes an undertaking not to divulge their contents to persons and/or organisations other than the designated recipients and not using them in the course of legal proceedings without prior written authorisation from the ICRC.

12. Identity Document and Commission

1. Delegates of the ICRC and ICRC representatives on temporary mission will hold a document called “Identity document and commission”, attesting to the bearer’s status as an ICRC staff member.
2. The possession of such a document, however, will not remove the need for Delegates of the ICRC and ICRC-representatives on temporary missions to hold an official or personal passport issued from their national authority as evidence of identity.
3. Delegates of the ICRC and ICRC representatives on temporary missions will be required to hold valid visas in order to travel to, enter and remain in Australia and will be required to comply with any visa restrictions or conditions.

13. Cooperation with the Host Country

1. The ICRC will co-operate with the authorities at all times with a view to preventing any form of abuse of the privileges, immunities and facilities provided for in this Arrangement.

Schedule 1 Arrangement between the Government of Australia and the International Committee of the Red Cross (“ICRC”) on a regional headquarters in Australia

2. The ICRC may waive the immunity granted to one of its Delegates in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the ICRC.

14. Interpretation

This Arrangement will be interpreted in the light of its primary objectives, which are to enable the ICRC to assume its responsibilities, to discharge its duties and to carry out its programmes fully and efficiently.

15. Settlement of Disputes by Negotiation

1. Any dispute between the Parties arising out of the interpretation or application of this Arrangement will be settled by negotiation between the Parties.

2. The Parties will bear in mind the national interests of Australia and the interests of the ICRC related to its activities. They will do everything possible to see that disputes are settled in good faith and equitably, and with the discretion essential to continued good relations between the Parties.

16. Amendments

This Arrangement may be amended at any time by the mutual written consent of the Parties.

17. Commencement

This Arrangement will come into effect on the date on which the Government of Australia notifies the ICRC that legislation giving effect to the relevant provisions of this Arrangement has commenced.

18. Termination

Either Party may terminate this Arrangement by providing the other Party with a minimum of six months’ written notice.

SIGNED AT CANBERRA ON THURSDAY 24 NOVEMBER 2005 IN TWO ORIGINALS IN ENGLISH.

FOR THE GOVERNMENT OF
AUSTRALIA

FOR THE INTERNATIONAL
COMMITTEE OF THE RED
CROSS

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Michael L’Estrange
Secretary
Department of Foreign Affairs
& Trade

Reto Meister
Delegate General for Asia and
Pacific

Annex A

In addition to the privileges and immunities granted to the ICRC in this Arrangement, the Parties note that the Government of New South Wales has given its approval for the ICRC to be exempt from the following:

Duty on insurance taken out by or on behalf of the ICRC, not being a policy of life insurance under the *Duties Act 1997* (NSW);

Duty in respect of an application to register a motor vehicle in New South Wales, under the *Duties Act 1997* (NSW);

Pay-roll tax on the wages paid to employees engaged in the work of the ICRC.