

## **Explanatory Statement**

Issued by the Authority of the Minister for Foreign Affairs

*International Organisations (Privileges and Immunities) Act 1963*

*International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation Related Meetings) Regulations 2022*

The *International Organisations (Privileges and Immunities) Act 1963* (the Act) makes provisions relating to the privileges and immunities of certain international organisations and of persons connected therewith. The Act also makes provision for the conferral of privileges and immunities for the purpose of certain international conferences.

Section 13 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5A provides that the regulations may declare an organisation to be an overseas organisation to which the Act applies.

Section 7 provides that the regulations may declare an international conference held in Australia to be a conference to which section 7 applies, where it appears to the Governor-General that the provisions of the Act do not, or may not, apply in relation to that conference but it is desirable that diplomatic privileges and immunities should be applicable in relation to that conference.

The purpose of the Regulations is to declare the Organisation for Joint Armament Co-operation (OCCAR) to be an overseas organisation to which the Act applies under section 5A, and to declare OCCAR related meetings to be international conferences to which section 7 of the Act applies.

OCCAR is a European inter-governmental organisation that manages cooperative arms procurement and support. Its Member States are Belgium, France, Germany, Italy, Spain, and the United Kingdom. Australia is a non-Member State and participates in relevant OCCAR programmes. Participation in OCCAR managed programmes includes hosting OCCAR related meetings to support Australian Defence capability projects.

The Regulations will confer privileges and immunities which are equivalent to those conferred on diplomatic agents in Australia to specified categories of OCCAR personnel and representatives of countries other than Australia. The key privileges and immunities include: personal inviolability; immunity from Australian jurisdiction; inviolability of papers, correspondence and property; and tax exemptions.

Subsection 7(1) of the Act provides that it must appear to the Governor-General that the provisions of the Act (other than section 7) do not, or may not, apply in relation to the conferences and that it is desirable that diplomatic privileges and immunities should be applicable in relation to those conferences.

OCCAR does not satisfy the requirements of section 5 of the Act for the purpose of declaring it to be an international organisation to which the Act applies. This is because Australia is not a member of OCCAR. It is desirable that diplomatic privileges and immunities are applicable in

relation to the conferences, as hosting of the meeting presents an opportunity to deepen Australia's engagement with OCCAR and encourage export opportunities for Australian defence industry.

Details of the *International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation Related Meetings) Regulations 2022* are set out in the Attachment.

In accordance with section 17 of the *Legislation Act 2003*, all relevant Commonwealth Government Departments were consulted in the preparation of the Regulations. No public consultation was undertaken in relation to the Regulations.

The Office of Best Practice Regulation advised (reference number OBPR22-02825) that a Regulatory Impact Statement is not required as the Regulations are unlikely to have a more than minor regulatory impact.

The Regulations have been assessed to be compatible with human rights for the purposes of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility is set out below.

The Regulations commenced on the day after registration and is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **Details of the *International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation Related Meetings) Regulations 2022***

### **Section 1 – Name**

This section provides that the title of the Regulations is the *International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation Related Meetings) Regulations 2022* (the Regulations).

### **Section 2 – Commencement**

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

### **Section 3 – Authority**

This section provides that the Regulations are made under the *International Organisations (Privileges and Immunities) Act 1963*.

### **Section 4 – Definitions**

This section provides that the term ‘Act’ means the *International Organisations (Privileges and Immunities) Act 1963*. This section also provides that the term ‘OCCAR’ means the Organisation for Joint Armament Co-operation.

This section also provides that the term ‘OCCAR meeting’ means an international conference relating to OCCAR. A note to the section explains that the expression ‘international conference’ is defined in section 3 of the Act.

### **Section 5 – Act applies to OCCAR**

This section provides that OCCAR is declared to be an overseas organisation to which the Act applies, for the purposes of section 5A(1) of the Act. ‘Overseas organisation’ is defined in section 3 of the Act. This enables OCCAR related meetings to meet the definition of an international conference under section 3(1) of the Act.

### **Section 6 – Privileges and immunities apply to OCCAR meetings**

This section provides that OCCAR meetings held in Australia after the commencement of this instrument are declared to be international conferences to which section 7 of the Act applies.

This entitles representatives at the conference, as defined by section 7(2)(a) of the Act, to the privileges and immunities accorded to a diplomatic agent. This also entitles members of the official staff of representatives at the conference, as defined by section 7(2)(b) of the Act, to the privileges and immunities accorded to a member of the administrative and technical staff of a diplomatic mission. This also entitles members of the secretariate established for the purpose of the conference, as defined by section 7(2)(c) of the Act to immunity from suit and from other legal process in respect of acts and things done in their capacity as such a member.

A note to this section reminds the reader that by operation of section 7(4) of the Act, this section will cease to be in force 12 months after commencement.

## Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) and 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

*International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation Related Meetings) Regulations 2022*

### Overview

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The *International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation Related Meetings) Regulations 2022* (the Regulations) is an instrument made under the *International Organisations (Privileges and Immunities) Act 1963* (Cth) (the Act).

The Regulations declare the *Organisation for Joint Armament Co-operation* (OCCAR) to be an overseas organisation to which the Act applies under section 5A and declare OCCAR meetings to be international conferences to which section 7 of the Act applies. The Regulations will confer privileges and immunities which are equivalent to those conferred on diplomatic agents in Australia to specified categories of OCCAR personnel and representatives of countries other than Australia in accordance with section 7 of the Act.

The privileges and immunities conferred by the Regulations are necessary to enable the effective conduct of OCCAR meetings in Australia and ensure the independence of its representatives. The privileges and immunities are conferred in the interest of OCCAR and not for the personal benefit of individuals.

The diplomatic privileges and immunities conferred upon the officials and representatives of OCCAR participating in the international conferences in Australia include immunity from Australia's criminal, civil and administrative jurisdiction consistent with immunities conferred on diplomatic agents in Australia. OCCAR may waive any privileges or immunities to which such persons are entitled.

### Human rights implications

This legislative instrument engages the following rights:

- The right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR).

This Article provides that any person “whose rights or freedoms ... are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” Article 2(3)(c) requires State Parties to the ICCPR to ensure that the competent authorities enforce such remedies when granted.

The Regulations confer privileges and immunities on representatives of OCCAR and representatives of countries other than Australia, as are accorded to diplomatic agents.

Such immunity from Australia's jurisdiction could limit the right to an effective remedy for breaches of human rights.

The Regulations are a permissible limitation on the right to an effective remedy because:

- The instances in which the Regulations would have the effect of limiting the right to an effective remedy are anticipated to be few given the time limited operation of the Regulations (12 months) and their application to a very limited group of individuals.
- The privileges and immunities are those that are necessary to ensure the effective conduct of OCCAR meetings in Australia. They are consistent with those provided to 'international conferences' declared under the Act. Under the Act, privileges and immunities are conferred in interest of the organisation and not for the personal benefit of individuals.
- These provisions are proportionate to the legislative objective. The need to grant privileges and immunities to the personnel of international and overseas organisations for the performance of the official functions of the organisations in Australia reflects established international practice. Privileges and immunities are conferred reciprocally between countries and to international organisations, to ensure that international representatives are able to: perform their work independently; report freely; and to fulfil their official duties. The privileges and immunities conferred are not only essential in allowing an organisation's representatives to perform their functions, but also as part of a wider and reciprocal legal framework that protects Australian representatives overseas to perform their duties without fear of local pressures, harassment, intimidation, attack and arbitrary detention.

## **Conclusion**

The Legislative Instrument will facilitate Australia's hosting of OCCAR meetings, which present an opportunity to deepen Australia's engagement with OCCAR and encourage export opportunities for Australian defence industry. The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to what is necessary in order to allow OCCAR personnel to perform their functions for the purpose of the international conference in Australia.