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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**INTERNATIONAL ORGANISATIONS (PRIVILEGES AND IMMUNITIES)  
AMENDMENT BILL 2013**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Foreign Affairs, Senator the Hon Bob Carr)

## **INTERNATIONAL ORGANISATIONS (PRIVILEGES AND IMMUNITIES) AMENDMENT BILL 2013**

### ***Outline***

The International Organisations (Privileges and Immunities) Amendment Bill 2013 (the Bill) amends the International Organisations (Privileges and Immunities) Act 1963 (the Act) to provide a legislative basis for the enactment of Regulations conferring privileges and immunities on the International Committee for the Red Cross (ICRC) and the International Criminal Court.

### **International Committee for the Red Cross**

Australia has signed a Memorandum of Understanding with the ICRC, the Arrangement between the Government of Australia and the International Committee for the Red Cross on a Regional Headquarters in Australia ('ICRC Arrangement'), conferring legal personality on the ICRC in Australia and other privileges and immunities needed to facilitate its work in Australia and the Pacific Region.

Currently, the Act allows privileges and immunities to be conferred on 'international organisations' and 'overseas organisations'. However, the Act defines these terms too narrowly to accommodate the independent and non-intergovernmental character of the ICRC. New section 9D addresses this by permitting the enactment of Regulations conferring privileges and immunities on the ICRC in accordance with the ICRC Arrangement.

By inserting a new section 9D, rather than extending the definition of 'international organisation' or 'overseas organisation', it is ensured that, in amending the Act to provide a legislative basis for conferring privileges and immunities on the ICRC, the amendment will not inadvertently encompass any other organisations. It also ensures that the privileges and immunities conferred on the ICRC will be limited to those set out in the ICRC Arrangement.

### **International Criminal Court**

The Agreement on Privileges and Immunities of the International Criminal Court ('ICC Agreement') confers privileges and immunities, including certain tax and financial exemptions, on the International Criminal Court (ICC), as well as a number of officials and other persons associated with the ICC, including victims participating in ICC proceedings.

Currently, Regulations made under the Act may confer privileges and immunities on international tribunals, such as the ICC, and persons associated with such tribunals. However, the Act does not refer to victims participating in proceedings before such tribunals. New section 9C addresses this problem and ensures that the Act provides an adequate basis for the enactment of Regulations conferring privileges and immunities on the ICC, including victims participating in proceedings, in accordance with the ICC Agreement. It also ensures that the privileges and immunities conferred on the ICC will be limited to those set out in the ICC Agreement.

This would place Australia in a position to accede to the ICC Agreement.

The Bill makes consequential amendments to sections 3 and 7 regarding international conferences to ensure that section 7 can be used in future in relation to the ICRC and ICC, as with international organisations to which the Act applies.

### ***Financial Impact***

The Department of Treasury has advised that conferring privileges and immunities on the ICRC would have a minimal (not zero but rounded to zero) cost to revenue. The Department of Treasury has advised that conferring privileges and immunities on the ICC would have a minimal (negligible) cost to revenue over the forward estimates period.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

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

### **Overview of the Bill**

The purpose of this Bill is to amend the International Organisations (Privileges and Immunities) Act (the Act) to permit the enactment of Regulations conferring privileges and immunities, including legal personality, on the International Committee for the Red Cross (ICRC) and the International Criminal Court (ICC).

### **International Committee for the Red Cross**

Australia has signed a Memorandum of Understanding with the ICRC, the Arrangement between the Government of Australia and the International Committee for the Red Cross on a Regional Headquarters in Australia ('ICRC Arrangement'), conferring legal personality on the ICRC in Australia and other privileges and immunities needed to facilitate its work in Australia and the Pacific Region.

Currently, the Act allows privileges and immunities to be conferred on 'international organisations' and 'overseas organisations'. However, the Act defines these terms too narrowly to accommodate the independent and non-intergovernmental character of the ICRC. New section 9D addresses this by permitting the enactment of Regulations conferring privileges and immunities on the ICRC in accordance with the ICRC Arrangement.

By inserting a new section 9D, rather than extending the definition of 'international organisation' or 'overseas organisation', it is ensured that in amending the Act to provide a legislative basis for conferring privileges and immunities on the ICRC, the amendment will not inadvertently encompass any other organisations. It also ensures that the privileges and immunities conferred on the ICRC will be limited to those set out in the ICRC Arrangement.

### **International Criminal Court**

The Agreement on Privileges and Immunities of the International Criminal Court ('ICC Agreement') confers privileges and immunities, including certain tax and financial exemptions, on the International Criminal Court (ICC), as well as a number of officials and other persons associated with the ICC, including victims participating in ICC proceedings.

Currently, Regulations made under the Act may confer privileges and immunities on international tribunals, such as the ICC, and persons associated with such tribunals. However, the Act does not refer to victims participating in proceedings before such tribunals. New section 9C addresses this problem and ensures that the Act provides an adequate basis for the enactment of Regulations conferring privileges and immunities on the ICC, including victims participating in proceedings, in accordance with the ICC Agreement. It also ensures that the privileges and immunities conferred on the ICC will be limited to those set out in the ICC Agreement.

This would place Australia in a position to accede to the ICC Agreement.

## **Conclusion**

The Bill extends the operation of the IOPI Act to two further organisations without changing the nature of the regime established by the Act. The Bill is compatible with human rights as it does not raise human rights issues, has no adverse implications for the Government's compliance with its human rights obligations and does not adversely affect the human rights of individuals.

The Bill will provide a basis for enhanced cooperation with the ICRC and ICC, both of which play significant roles in, inter alia, promoting and implementing respect for human rights and the rule of law. To this extent, the Bill should contribute to the advancement of human rights.

## NOTES ON CLAUSES

### *Clause 1—Short title*

1. This clause provides a short title for the Act, the *International Organisations (Privileges and Immunities) Amendment Act 2013*.

### *Clause 2—Commencement*

2. This clause provides that the amendments to the IOPI Act in the first Schedule to the Bill will commence on a single day to be fixed by Proclamation, or within six months of Royal Assent.

### *Clause 3—Schedule 1*

3. This clause provides that each Act specified in the Schedule to the Bill will be amended or repealed as set out in the Schedule.

## Schedule 1— Amendments

### *International Organisations (Privileges and Immunities) Act 1963*

#### *Item 1*

4. This Item will insert a definition of the ‘ICRC Arrangement’.

#### *Items 2 and 3*

5. These items make a consequential amendment which extends the definition of ‘international conference’ so as to include conferences attended by an ICC or ICRC representative and an Australian representative.

#### *Item 4*

6. This Item inserts a definition of the International Criminal Court.

#### *Items 5 to 10*

7. Where it appears to the Governor-General that the Act would not apply to a given conference or mission, but it is desirable that it should do so, Section 7 of the Act permits the Regulations to declare a conference or mission to be one to which the Act applies. Because new sections 9C and 9D (see below) do not have the effect of making the ICC and ICRC “international organisations to which this Act applies” or “overseas organisations to which this Act applies”, without a consequential amendment to Section 7, the Governor-General would not retain the future discretion to rely upon Section 7 to declare relevant conferences and missions to the benefit of the ICC and ICRC. Items 5 to 10 make consequential amendments to Section 7 so as to retain this future flexibility.

#### *Item 11*

8. As the power to enact Regulations conferring privileges and immunities and juridical status on the ICC is contained in new Section 9C (see below), Item 20 introduces a consequential amendment clarifying that for the purpose of Section 9B(3), “international tribunal” does not refer to the ICC.

*Item 12*

9. Item 12 inserts a new Section 9C into the Act permitting the enactment of Regulations conferring on the International Criminal Court and those persons referred to in the Agreement on Privileges and Immunities of the International Criminal Court such privileges and immunities as are required to give effect to that Agreement.

10. Item 12 also inserts a new Section 9D in into the Act permitting the enactment of Regulations conferring on the International Committee for the Red Cross and those persons referred to in the Arrangement between the Government of Australia and the International Committee for the Red Cross on a Regional Headquarters in Australia, such privileges and immunities, including legal personality, as are required to give effect to that Agreement.

*Item 13*

11. This item inserts a note which clarifies that subsection 12(1) does not apply to the ICRC.