

1995

THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

SENATE

**OVERSEAS MISSIONS (PRIVILEGES AND IMMUNITIES) (CONSEQUENTIAL
AMENDMENTS) BILL 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Foreign Affairs,
Senator Gareth Evans)



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OVERSEAS MISSIONS (PRIVILEGES AND IMMUNITIES) (CONSEQUENTIAL AMENDMENTS) BILL 1995

GENERAL OUTLINE

1. This Bill makes a number of amendments to Commonwealth Acts as a consequence of the *Overseas Missions (Privileges and Immunities) Act 1995*. The Overseas Missions (Privileges and Immunities) Act accords privileges and immunities to the premises of, and persons associated with certain overseas missions in Australia which represent self governing or autonomous entities which are not states and which Australia does not recognise as states.
2. A number of existing Commonwealth Acts seek to provide protection to the premises of, and certain persons associated with consular and diplomatic missions and international organizations. The Overseas Missions (Consequential Amendments) Bill extends the scope of existing legislation to provide appropriate protection to the premises of and persons associated with designated overseas missions as they are defined by the Overseas Missions (Privileges and Immunities) Act.
3. The Bill will amend:
 - (i) The *Australian Protective Service Act 1987* to provide for the protection of property by the Australian Protective Service in which a designated overseas mission (as defined by the Overseas Missions (Privileges and Immunities) Act) has an interest.
 - (ii) The *Crimes (Internationally Protected Persons) Act 1976* to enable the Governor-General to make regulations declaring certain persons associated with a designated overseas mission (as defined by the Overseas Missions (Privileges and Immunities) Act) to be "internationally protected persons" for the purpose of that Act.
 - (iii) The *Diplomatic and Consular Missions Act 1978* to protect designated overseas missions from being falsely represented by bogus or unofficial missions. Amendments to this Act will also ensure that designated overseas missions do not falsely purport to represent the activities of diplomatic or consular missions, and vice versa.
 - (iv) The *Public Order (Protection of Persons and Property) Act 1971* to extend protection under that Act to designated overseas missions (as defined by the Overseas Missions (Privileges and Immunities) Act) consistent with Australia's obligation to protect diplomatic and consular missions under international law.

FINANCIAL IMPACT STATEMENT

4. Amendment of the Australian Protective Service Act to include the protection of designated overseas missions may require increased resources to be devoted to the Australian Protective Service. The amount of such an increase is not quantifiable at this stage, and will depend on the number of missions requiring such protection. However, it is considered that the potential for economic gain which will result from the presence and

operations of such missions in Australia far outweighs the cost of providing protective services to those missions. The other amendments contained in the Bill will have no financial impact.

NOTES ON CLAUSES

Clause 1 - Short title

5. This clause provides for the Act to be cited as the *Overseas Missions (Privileges and Immunities) (Consequential Amendments) Act 1995*.

Clause 2- Commencement

6. Clause 2 provides that the Act shall commence on the day of Royal Assent. Early commencement of the Act is preferable to enable the effective implementation of the Overseas Missions (Privileges and Immunities) Act.

Clause 3 - Amendments

7. Clause 3 provides that the Acts referred to in the Schedules are amended as set out in those Schedules.

SCHEDULE 1 - AUSTRALIAN PROTECTIVE SERVICE ACT 1987

8. Item 1 of Schedule 1 inserts a new paragraph (ab) after paragraph 6(2)(a) to include the protection of property in which a designated overseas mission has an interest within the scope of the functions of the Australian Protective Service.
9. Item 2 includes functions which are incidental to the protection of designated overseas missions within the scope of the functions to be carried out by the Australian Protective Service under paragraph 6(2)(e).
10. Item 3 inserts a new subsection (3A) after subsection 6(3). The new subsection provides that a designated overseas mission is taken to have an interest in property when it either owns, occupies or uses that property, or when the property is in its possession or control.
11. Item 4 inserts a definition which links the extension of protection afforded by the Act to the Overseas Missions (Privileges and Immunities) Act.

SCHEDULE 2 - CRIMES (INTERNATIONALLY PROTECTED PERSONS) ACT 1976

12. Item 1 omits subsection 3(2) from the Act.
13. Item 2 inserts a new section 3A after section 3 of the Act which provides an extended meaning of an "internationally protected person" for the purposes of the Act. The new section is a clarification rather than consequential amendment. It specifically states that the existing definition of an "internationally protected person" includes the Governor-General of Australia.
14. Subsection (2) of the new section 3A clarifies the classes of persons who may be declared to be "internationally protected persons" by regulation made under the Act. In particular, the new subsection 3A(2) extends the application of the Act to persons associated with designated overseas missions.

15. Subsection (3) of the new section 3A provides the Governor-General with the authority to make regulations which will give effect to section 3A. This replaces the regulation making power previously under section 17.
16. Subsection (4) of the new section 3A provides definitions which link the extension of protection afforded by the Act to the Overseas Missions (Privileges and Immunities) Act.
17. Item 3 repeals section 17 of the Act. Section 17 is effectively replaced by the new subsection 3A(3).

SCHEDULE 3 - DIPLOMATIC AND CONSULAR MISSIONS ACT 1978

18. Item 1 is a technical amendment which clarifies the application of the Act to designated overseas missions.
19. Item 2 inserts into subsection 3(1) definitions which link the extension of protection afforded by the Act to the Overseas Missions (Privileges and Immunities) Act.
20. Item 3 omits the existing paragraph 4(1)(a) and in its place inserts a new paragraph which provides the Attorney-General with the authority to apply for an injunction restraining a person from engaging in prohibited conduct which relates to a diplomatic or consular mission in Australia; or which relates to a designated overseas mission of a foreign territory. Prohibited conduct is outlined further under subsection 4(2).
21. Item 4 is a technical amendment to allow for the continuation of subsection 4(2) to include new paragraphs (c) and (d).
22. Item 5 adds to the end of paragraph 4(2)(b) new paragraphs (c) and (d) which outline conduct that does not constitute prohibited conduct under the Act. The new paragraphs are intended to protect the authorised activities of designated overseas missions from possibly constituting prohibited activities, in so far as they may overlap with the activities of a diplomatic or consular mission.
23. Item 6 inserts after section 4(2) new subsections (2A) and (2B), which outline prohibited conduct relating to designated overseas missions. The effect of these subsections is to provide protection to designated overseas missions and their staff, acting within the mission's authorised capacities, from activities which amount to false claims to be the premises of a designated overseas mission, or the residence of a member of the staff of a designated overseas mission; or false claims as to the existence of a designated overseas mission in Australia, or of being a person associated with such designated overseas mission.
24. Subparagraph (e) of the new subsection (2A), and subparagraph (c) of the new subsection (2B), provide that conduct which is carried out by a diplomatic or consular mission in Australia in the performance of its diplomatic or consular functions, or at the request of a member of such mission, is not prohibited conduct. The intention of this is to ensure that the activities of diplomatic or consular missions do not amount to prohibited activities in so far as they may overlap with the authorised activities of a designated overseas mission.

25. Item 7 extends the application of subsection 5(1) which deals with the removal of signs etc., to cover designated overseas missions.
26. Item 8 inserts after subsection 6(1) a new subsection (1A) which provides that the Minister for Foreign Affairs may, for the purpose of this Act, provide certificates which declare facts that are relevant to the protection of missions under the Act. Any certificate issued by the Minister in accordance with this subsection amounts to prima facie evidence that the facts certified are true.

SCHEDULE 4 - PUBLIC ORDER (PROTECTION OF PERSONS AND PROPERTY) ACT
1971

27. Item 1 is a technical amendment to the title indicating that the Act extends to designated overseas missions.
28. Item 2 inserts definitions into subsection 4(1) which link the extension of protection afforded under the Act with the Overseas Missions (Privileges and Immunities) Act.
29. Item 3 inserts into subsection 4(1) a new paragraph (ba), which extends the definition of a "protected person" to include a prescribed staff member of a designated overseas mission.
30. Item 4 inserts into subsection 4(1) a new paragraph (ba), which extends the definition of "protected premises" to include premises occupied for the purposes of a designated overseas mission.
31. Item 5 inserts at the end of section 4 a new subsection (3), which provides the Governor-General with the authority to make regulations indicating who is a "prescribed staff member" under subsection (1).
32. Item 6 is a technical amendment which is intended to indicate that Part III of the extends to designated overseas missions.
33. Item 7 acknowledges in amending section 14, that the special duty imposed upon Australia at international law to protect diplomatic and consular missions does not apply to designated overseas missions. However the extension of the Act to protect designated overseas missions is consistent with these obligations.

