

An Act relating to Diplomatic Privileges and Immunities, and for other purposes

1 Short title

This Act may be cited as the *Diplomatic Privileges and Immunities Act 1967*.

2 Commencement

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Repeal

The *Diplomatic Immunities Act 1952* and the *Diplomatic Immunities Act 1958* are repealed.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

acquisition has the meaning given by section 195-1 of the GST Act.

approved form has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

Commissioner means the Commissioner of Taxation.

Convention means the Vienna Convention on Diplomatic Relations, a copy of the English text of which is set out in the Schedule.

Customs Minister means the Minister administering the *Customs Act 1901*.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

indirect tax means:

- (a) GST within the meaning of section 195-1 of the GST Act; or
- (b) luxury car tax within the meaning of section 27-1 of the Luxury Car Tax Act; or
- (c) wine equalisation tax within the meaning of section 33-1 of the Wine Equalisation Tax Act.

Luxury Car Tax Act means the *A New Tax System (Luxury Car Tax) Act 1999*.

mission means a diplomatic mission.

overseas country means a country other than Australia or an external Territory.

prescribed overseas country means an overseas country prescribed by the regulations for the purposes of this definition.

Wine Equalisation Tax Act means the *A New Tax System (Wine Equalisation Tax) Act 1999*.

- (2) In this Act, expressions defined by the Convention have the same respective meanings as they have in the Convention.

5 Extension to Territories

This Act extends to every external Territory.

5A Application of Act in relation to certain international organizations

- (1) In this section, **international organization** means:
 - (a) an organization the members of which are overseas countries in a particular geographical region;
 - (b) an organization that is constituted by persons representing overseas countries in a particular geographical region; or
 - (c) an organization established, or a group of organizations constituted, by:
 - (i) organizations the members of which are overseas countries in a particular geographical region; or

- (ii) organizations that are constituted by persons representing overseas countries in a particular geographical region;

being an organization or a group of organizations that is declared by the regulations to be an international organization for the purposes of this section.

- (2) This Act applies in relation to an international organization as if:
 - (a) each reference in a provision of this Act other than section 12 to an overseas country, and each reference in the Convention to a sending State, included a reference to the international organization;
 - (b) each reference in the Convention to the Government of a sending State included a reference to the international organization or, if an organ of the international organization is, for the time being, specified by the regulations in relation to the international organization for the purposes of this paragraph, that organ;
 - (c) any mission or other agency of the international organization that exercises functions substantially corresponding to functions exercised by a diplomatic mission were a diplomatic mission; and
 - (d) in subsection 12(1):
 - (i) “a mission of Australia to an international organization (as defined by subsection 5A(1)), being a mission that exercises functions substantially corresponding to functions exercised by a diplomatic mission” were substituted for “a mission of Australia in an overseas country”; and
 - (ii) “the mission in Australia of that international organization” were substituted for “the mission of that country”.

6 Exclusion of other laws

It is hereby declared to be the intention of the Parliament that this Act shall operate to the exclusion of:

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- (a) any Imperial Act, law of the Commonwealth or rule of the common law in force in a State or in a Territory immediately before the commencement of this Act; or
 - (b) any law of a State or of a Territory made after the commencement of this Act;
- that deals with a matter dealt with by this Act.

7 Vienna Convention on Diplomatic Relations to have force of law

- (1) Subject to this section, the provisions of Articles 1, 22 to 24 (inclusive) and 27 to 40 (inclusive) of the Convention have the force of law in Australia and in every external Territory.
- (2) For the purposes of those provisions as so having the force of law:
 - (a) a reference in those provisions to the receiving State shall be read as a reference to Australia and, where the context so permits, as including a reference to every State of the Commonwealth and every Territory;
 - (b) a reference in those provisions to a national of the receiving State shall be read as a reference to an Australian citizen;
 - (c) the reference in paragraph 1 of Article 22 to agents of the receiving State shall be read as including a reference to members and special members of the Australian Federal Police, members of the police force of a State or of a Territory and persons exercising a power of entry to premises;
 - (d) a waiver by the head of the mission of an overseas country, or by a person for the time being performing the functions of the head of the mission of an overseas country, shall be deemed to be a waiver by that overseas country;
 - (e) the provisions of Articles 35, 36 and 40 shall be treated as granting the privileges or immunities that those Articles require to be granted;
 - (f) the reference in paragraph 1 of Article 36 to such laws and regulations as the receiving State may adopt shall be read as including a reference to subsection (3), to section 8 and to any regulations made under this Act for the purposes of that paragraph as having the force of law by virtue of this section;

- (g) the references in paragraph 4 of Article 37 and paragraph 2 of Article 38 to the extent to which privileges and immunities are admitted by the receiving State shall be read as references to the extent to which privileges and immunities are granted by section 11; and
 - (h) the reference in paragraph 1 of Article 39 to the Ministry for Foreign Affairs or such other ministry as may be agreed shall be read as a reference to the Department administered by the Minister administering this Act.
- (3) Nothing in subsection (1) affects the application of any law of the Commonwealth or of a Territory 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 subsection does not prejudice the immunity from suit or from civil or criminal process that a person has by virtue of subsection (1).
- (4) The provisions of the Convention, in so far as they provide for the exemption from tax of any income, apply, for the purposes of the application of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, to assessments in respect of income of the year of income that commenced on 1 July 1967, and in respect of income of all subsequent years of income.
- (5) For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under the Convention as having the force of law by virtue of this section shall be deemed not to be a matter arising directly under a treaty.

8 Limitation on exemption from customs duties

- (1) This section applies in relation to the exemption from customs duties, taxes and related charges provided for by paragraph 1 of Article 36, or paragraph 1 or paragraph 2 of Article 37, of the Convention as having the force of law by virtue of section 7 in respect of articles imported into Australia that are for the use of a mission or person referred to in that paragraph.
- (1A) Despite:
- (a) section 177-5 of the GST Act; and

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- (b) section 21-5 of the Luxury Car Tax Act; and
 - (c) section 27-25 of the Wine Equalisation Tax Act;
- indirect tax that would be payable on an importation under one of those Acts is not payable on an importation covered by the exemption from customs duties, taxes and related charges provided for by paragraph 1 of Article 36, or paragraph 1 or paragraph 2 of Article 37, of the Convention and section 7 of this Act.
- (2) The exemption does not apply where any other articles of the same kind, or of a similar kind, that have been imported into Australia were, at the time when they were entered for home consumption under the *Customs Act 1901*, intended for the use of the mission or person and the Customs Minister, by instrument in writing, declares that, in his or her opinion, the reasonable requirements of the mission or person, as the case may be, have adequately been met by the other articles.
 - (3) The exemption does not apply unless:
 - (a) the person for whose use the articles are intended, or, if the articles are intended for the use of a mission, the head of the mission, agrees that, if the articles are sold or otherwise disposed of in Australia or in an external Territory within, in the case of articles other than motor vehicles, 2 years, and in the case of motor vehicles, 3 years, after the date of entry of the articles for home consumption under the *Customs Act 1901*, he or she will pay to the Commonwealth an amount equal to so much (if any) as the Customs Minister determines of the customs duties, taxes and related charges that, but for paragraph 1 of Article 36, or paragraph 1 or paragraph 2 of Article 37, of the Convention, as the case may be, would have been payable in respect of the articles; and
 - (b) where the person so entering into an agreement has previously entered into a similar agreement in relation to any other articles and has committed a breach of that last-mentioned agreement—the person complies with such conditions, if any, as the Customs Minister, by instrument in writing, determines (which may include a condition that the person give security, satisfactory to that Minister, that he or she will comply with the first-mentioned agreement).

- (4) In subsection (3), *motor vehicle* means a vehicle with a motor engine, being a vehicle ordinarily for use on land.

9 Exemption from excise duty

- (1) Subject to this section, duties of excise imposed by the *Excise Tariff Act 1921* are not payable in respect of goods that are, at the time when they are entered for home consumption under an Act relating to duties of excise, intended for:
- (a) the official use of the mission of an overseas country;
 - (b) the personal use of a person who is:
 - (i) the head of such a mission; or
 - (ii) a member of the diplomatic staff of such a mission; being a person who is not an Australian citizen and is not ordinarily resident in Australia or in an external Territory; or
 - (c) the personal use of a member of the family of a person referred to in paragraph (b), being a member of the family who forms part of the household of the person and is not an Australian citizen.
- (2) Subsection (1) does not apply in respect of goods that are intended for the use of a mission or person referred to in that subsection where any other goods of the same kind, or of a similar kind, that have been entered for home consumption under an Act relating to duties of excise were, at the time when they were so entered, intended for the use of the mission or person and the Customs Minister, by instrument in writing, declares that, in his or her opinion, the reasonable requirements of the mission or person, as the case may be, have adequately been met by the other goods.
- (3) Subsection (1) does not apply in respect of any goods unless:
- (a) the person for whose use the goods are intended, or, if the goods are intended for the use of a mission, the head of the mission, agrees that, if the goods are sold or otherwise disposed of in Australia or in an external Territory within 2 years after the date of entry of the goods for home consumption under an Act relating to duties of excise, he or she will, unless the Customs Minister otherwise determines, pay to the Commonwealth an amount equal to the duties of

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excise that, but for this section, would have been payable in respect of the goods; and

- (b) where the person so entering into an agreement has previously entered into a similar agreement in relation to any other goods and has committed a breach of that last-mentioned agreement—the person complies with such conditions, if any, as the Customs Minister, by instrument in writing, determines (which may include a condition that the person give security, satisfactory to that Minister, that he or she will comply with the first-mentioned agreement).

10B Indirect tax concession scheme

(1) If:

- (a) an acquisition covered by a determination of the Minister is made:
- (i) by or on behalf of the head of a mission; or
 - (ii) by a member of the mission, a member of the family of such a person or another person, who is;
- covered by a determination of the Minister; and
- (b) at the time of the acquisition, it was intended for:
- (i) the official use of the mission; or
 - (ii) a use covered by a determination of the Minister;

the Commissioner must, on behalf of the Commonwealth and subject to subsection (3), pay to the head of the mission (or a person in a class of persons determined by the Minister) an amount equal to the amount of indirect tax payable (if any) in respect of the supply of that acquisition.

- (2) A claim for an amount covered by subsection (1) must be in the approved form.
- (3) The amount is payable:
- (a) in accordance with the conditions and limitations; and
 - (b) within the period and in the manner;
- determined by the Minister.
- (4) A determination under this section is a legislative instrument.

(5) In this section:

mission includes an international organisation that has been declared by the regulations for the purposes of section 5A.

11 Privileges and immunities of certain members of the staff of a mission and of private servants of members of a mission

In respect of acts performed in the course of their duties:

- (a) members of the administrative and technical staff, and members of the service staff, of the mission of an overseas country who are Australian citizens or are ordinarily resident in Australia or in an external Territory; and
- (b) private servants of members of such a mission;

are entitled to the immunity from jurisdiction, and inviolability, to which persons referred to in paragraph 1 of Article 38 of the Convention as having the force of law by virtue of this Act are entitled.

12 Withdrawal of privileges and immunities

- (1) Where the Minister is satisfied that the privileges and immunities granted in relation to a mission of Australia in an overseas country, or to persons connected with that mission, are less than the privileges and immunities granted by this Act in relation to the mission of that country, or to persons connected with that mission, he or she may, by instrument in writing, withdraw, in relation to that mission or to persons connected with that mission, all or any of the privileges and immunities granted by this Act.
- (2) The Minister shall cause any such instrument to be published in the *Gazette*.

14 Certificates by Minister

- (1) The Minister may give a certificate in writing certifying any fact relevant to the question whether a person is, or was at any time or in respect of any period, entitled to any privileges or immunities by virtue of this Act, of an Act repealed by this Act or of the regulations.

- (2) In any proceedings, a certificate given under this section is prima facie evidence of the facts certified.

14A Delegation

- (1) The Customs Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by that Minister, delegate to a person all or any of that Minister's powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Customs Minister.
- (3) A delegation under this section does not prevent the exercise of a power by the Customs Minister.

15 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule—Vienna Convention on Diplomatic Relations

Section 4

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the “head of the mission” is the person charged by the sending State with the duty of acting in that capacity
- (b) the “members of the mission” are the head of the mission and the members of the staff of the mission;
- (c) the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) the “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;
- (e) a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;

- (f) the “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the “members of the service staff” are the members of the staff of the mission in the domestic service of the mission;
- (h) a “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist *inter alia* in:
 - (a) representing the sending State in the receiving State;
 - (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
 - (c) negotiating with the Government of the receiving State;
 - (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
 - (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1. The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

Article 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a *chargé d'affaires ad interim* in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 7

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

Article 8

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 9

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other

member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

Article 10

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

- (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
- (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
- (c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
- (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

Article 11

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 13

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined to the date and time of the arrival of the head of the mission.

Article 14

1. Heads of mission are divided into three classes, namely:

- (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) that of envoys, ministers and internuncios accredited to Heads of State;
- (c) that of *chargés d'affaires* accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 16

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 19

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a *chargé d'affaires ad interim* shall act provisionally as head of the mission. The name of the *chargé d'affaires ad interim* shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 21

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the

Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due

respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

Article 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

Article 33

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or his authorized representative.

Article 37

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a

manner as not to interfere unduly with the performance of the functions of the mission.

Article 39

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

Article 41

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 42

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

Article 43

The function of a diplomatic agent comes to an end, *inter alia*:

- (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;

- (b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

Article 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Article 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 47

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
- (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

- (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 48

The present Convention shall be open for signature by all State Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 50

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 51

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;

(b) of the date on which the present Convention will enter into force, in accordance with Article 51.

Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE AT VIENNA, this eighteenth day of April one thousand nine hundred and sixty-one.

(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed.)

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Diplomatic Privileges and Immunities Act 1967	16, 1967	12 May 1967	12 May 1967	
Diplomatic Privileges and Immunities Act 1972	69, 1972	31 Aug 1972	31 Aug 1972	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	ss. 9(1) and 10
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	s. 3: (a)	s. 4
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	19 Oct 1979 (<i>see</i> s. 2 and <i>Gazette</i> 1979, No. S206)	—
Diplomatic Privileges and Immunities Amendment Act 1980	41, 1980	23 May 1980	23 May 1980	—
Australian Federal Police (Consequential Amendments) Act 1980	70, 1980	28 May 1980	28 May 1980	—
Statute Law (Miscellaneous Amendments) Act (No. 1) 1982	26, 1982	7 May 1982	Part XX (ss. 148, 149): 4 June 1982 (b)	—
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (c)	s. 280(2) and (3)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: 3 July 1985 (<i>d</i>)	—
Diplomatic and Consular Privileges Amendment Act 1988	15, 1988	11 May 1988	11 May 1988	s. 4
Sales Tax Amendment (Transitional) Act 1992	118, 1992	30 Sept 1992	28 Oct 1992	—
Income Tax (Consequential Amendments) Act 1997	39, 1997	17 Apr 1997	1 July 1997	—
A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999	177, 1999	22 Dec 1999	Sch 7 (items 10–18): 1 July 1999 (s 2(9))	—
as amended by Taxation Laws Amendment Act (No. 8) 2000	156, 2000	21 Dec 2000	Sch 7 (item 10): 22 Dec 1999 (s 2(5))	—
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Schedule 5 (item 112) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11)
Australian Citizenship (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (<i>see</i> s. 2(1) and F2007L01653) Remainder: Royal Assent	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (items 252–258): 4 July 2008	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 106–112) and Schedule 6 (item 37): 19 Apr 2011	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 3 (items 108, 343): Royal Assent	Sch. 3 (item 343)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 3 (item 19): 21 Oct 2016 (s 2(1) item 1)	—

- (a) The *Diplomatic Privileges and Immunities Act 1967* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(7) of which provides as follows:
- (7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975.
- (b) The *Diplomatic Privileges and Immunities Act 1967* was amended by Part XX (sections 148 and 149) only of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, subsection 2(12) of which provides as follows:
- (12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (c) The *Diplomatic Privileges and Immunities Act 1967* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent.
- (d) The *Diplomatic Privileges and Immunities Act 1967* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No.1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 4.....	am No 69, 1972; No 216, 1973; No 41, 1980; No 65, 1985; No 15, 1988; No 118, 1992; No 177, 1999; No 21, 2007; No 5, 2011
s 5.....	am No 216, 1973
s 5A.....	ad No 41, 1980
s 6.....	am No 216, 1973
s 7.....	am No 69, 1972; No 216, 1973; No 155, 1979; Nos 41 and 70, 1980; No 65, 1985; No 15, 1988; No 39, 1997; No 5, 2011
s 8.....	am No 69, 1972; No 216, 1973; No 91, 1976; No 41, 1980; Nos 26 and 80, 1982; No 15, 1988; No 177, 1999; No 73, 2008; No 5, 2011
s 9.....	am No 69, 1972; No 216, 1973; No 91, 1976; No 41, 1980; No 80, 1982; No 65, 1985; No 15, 1988; No 73, 2008; No 5, 2011
s 10.....	am No 69, 1972; No 216, 1973; No 41, 1980; No 65, 1985; No 118, 1992 rep No 101, 2006
s 10A.....	ad No 15, 1988 am No 118, 1992 rep No 101, 2006
s 10B.....	ad No 177, 1999 am No 103, 2013
s 11.....	am No 69, 1972; No 216, 1973
s 12.....	am No 73, 2008
s 13.....	rep No 69, 1972
s 14.....	am No 61, 2016
s 14A.....	ad No 65, 1985 am No 5, 2011
Schedule heading.....	rs No 65, 1985
