

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

FRLI: F2013L01916

Portfolio: Foreign Affairs

Tabled: House of Representatives and Senate, 12 November 2013

### Summary of committee concerns

2.26 The committee requires further information to assess the compatibility of this regulation with human rights.

### Overview

2.27 This regulation confers privileges and immunities on the International Committee of the Red Cross (ICRC) to give effect to the *Arrangement between the Government of Australia and the International Committee of the Red Cross on a Regional Headquarters in Australia*, done at Canberra on 24 November 2005. It confers on the ICRC in Australia legal status and such legal capacities as are necessary for the exercise of its powers and the performance of its functions. The regulation is intended to support the work of the ICRC in Australia and the Pacific region.

### Compatibility with human rights

#### *Statement of compatibility*

2.28 The instrument is accompanied by a statement of compatibility that states that it does not engage any human rights. The statement asserts that the instrument 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.<sup>17</sup>

2.29 The statement also states that the instrument 'should contribute to the advancement of human rights' as it 'will provide a basis for enhanced cooperation with the ICRC, which plays a significant role in, inter alia, promoting and implementing respect for human rights.'<sup>18</sup>

#### *Committee view on compatibility*

2.30 The committee notes that its predecessor committee (former committee) examined the enabling legislation for this regulation, namely, the International Organisations (Privileges and Immunities) Amendment Bill 2013.<sup>19</sup> As the former

---

17 Statement of compatibility, p 1.

18 Statement of compatibility, p 1.

19 See, Parliamentary Joint Committee on Human Rights, *Fourth Report of 2013*, pp 42-47; and *Sixth Report of 2013*, pp 228-232.

committee acknowledged,<sup>20</sup> the ICRC has made a significant contribution to the rule of law and to providing redress for people who have been subjected to international crimes and violations of international humanitarian law. The committee agrees that this regulation may be viewed as promoting human rights to the extent that it enhances the ability of the ICRC to carry out its work.

#### *Right to a fair hearing*

2.31 However, the committee notes that the regulation may give rise to a number of concerns which are not addressed in the statement of compatibility. For example, the regulation will, among other things, provide immunity from suit and other legal process (including being called as a witness) to delegates of the ICRC in Australia and representatives of the ICRC on temporary mission in Australia. These provisions clearly engage and limit the right to a fair hearing contained in article 14(1) of the International Covenant on Civil and Political Rights (ICCPR). While restrictions on the right of access to court may be permissible in certain circumstances, the committee expects such measures to be justified in the statement of compatibility, addressing whether they are aimed at legitimate objectives and are reasonable, necessary and proportionate to those objectives. The former committee noted similar concerns.<sup>21</sup> Indeed, in light of the former committee's comments, it is surprising that the statement of compatibility considers that the regulation does not engage any rights.

#### *Other issues relating to compliance with obligations under the Convention against Torture*

2.32 In its examination of the International Organisations (Privileges and Immunities) Amendment Bill 2013,<sup>22</sup> this committee's predecessor took the opportunity to comment on the consistency of the *International Organisations (Privileges and Immunities) Act 1963* and three other statutes<sup>23</sup> which relate to the conferral of privileges and immunities on particular categories of persons. It noted that the effect of these statutes appeared to be that Australian law conferred immunity from criminal process on persons who might be suspected of having committed the offence of torture, and that this immunity appeared to be inconsistent with Australia's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

2.33 The former committee also noted that at least one Australian appellate court had in a civil case involving the CAT, upheld an interpretation of the scope of the term 'torture' under the CAT that, if adopted in a criminal case, would result in a

---

20 Parliamentary Joint Committee on Human Rights, *Fourth Report of 2013*, p 43.

21 Parliamentary Joint Committee on Human Rights, *Fourth Report of 2013*, p 43.

22 See, Parliamentary Joint Committee on Human Rights, *Fourth Report of 2013*, pp 42-47; and *Sixth Report of 2013*, pp 228-232.

23 *Foreign States Immunities Act 1985*, *Diplomatic Privileges and Immunities Act 1967*, and the *Consular Privileges and Immunities Act 1972*.

failure by Australia to fulfil its obligations under the Convention. That interpretation had been supported by the Commonwealth Attorney-General.

2.34 The upshot of that interpretation is that under Australian law it appears that a person who had previously enjoyed immunity because of their status as a high level foreign official, diplomat or consular official would not be liable to prosecution or extradition under Australian laws for alleged acts of torture committed while holding that office. Under the CAT, Australia has accepted an obligation to have in place laws which permit the investigation and prosecution or extradition of persons alleged to have committed torture, including persons who may enjoy immunity *ratione materiae* (that is, in relation to acts performed as part of their official functions after they have left that office).

**2.35 The committee intends to write to the Minister for Foreign Affairs to refer her to the previous committee's comments on this issue and to seek clarification as to whether this regulation is compatible with human rights, in particular, the right to a fair hearing.**

**2.36 The committee also draws to the attention of the Minister the comments of its predecessor committee on the apparent inconsistency of Australia's laws on granting privileges and immunities with its obligations under the Convention against Torture, and requests the Minister to undertake a review of those laws in relation to this aspect of their operation.**

