

X. Diplomatic and Consular Relations

Territories Not Recognised as States — Conferral of Privileges and Immunities on Missions — Overseas Missions (Privileges and Immunities) Bill

On 21 June 1995, in the House of Representatives, the Special Minister of State, Assistant Minister for Industrial Relations and Minister Assisting the Prime Minister for Public Service Matters, Mr Johns, gave the second reading speech for the Overseas Missions (Privileges and Immunities) Bill 1995, and its cognate, the Overseas Missions (Privileges and Immunities) (Consequential Amendments) Bill 1995. The text of the speech follows (House of Representatives, *Debates*, vol 202, p 1294):

This bill is intended to allow privileges and immunities to be conferred upon the premises of, and persons associated with, certain overseas missions in Australia which represent self governing or autonomous foreign territories that are not states and are not recognised by Australia as states.

The proposed legislation seeks to accommodate the changing political climate within our region, in which sovereign states are no longer the only players. Self governing or autonomous foreign territories which are not states and which Australia does not recognise as states, such as Hong Kong, New Caledonia and the Cook Islands, are increasingly taking part in the economic and trade affairs of the region in their own right. This legislation seeks to provide a window of opportunity for such territories to establish official representation in Australia for the purposes of promoting bilateral trade and performing a liaison function regarding multilateral trade and economic issues.

At present, privileges and immunities are afforded to diplomatic and consular missions and their staff in Australia. This is done by virtue of the Diplomatic Privileges and Immunities Act 1967 and the Consular Privileges and Immunities Act 1972 respectively, which reflect the Vienna Conventions on Diplomatic and Consular Relations. Also, the International Organizations (Privileges and Immunities) Act 1963 affords privileges and immunities to international organisations and their staff where they establish a mission in Australia. The current legislation is deficient, however, in that it does not afford privileges and immunities to missions which do not represent sovereign states or international organisations.

The Overseas Missions (Privileges and Immunities) Bill therefore flows from Australia's existing obligations under international law which relate to diplomatic and consular missions. It is further intended to fill the existing gap in legislation regarding missions from self governing or autonomous entities. The privileges and immunities afforded under the legislation would protect the operations of the mission thus assisting in the effective performance of their functions. I stress that the purpose of providing privileges and immunities is to facilitate the effective and unhindered operations of the missions. They are not

intended for the benefit of individuals but are accorded solely in the interests of the mission, to enable it to perform its functions.

In order to come within the scope of the bill, two conditions must be met. Firstly, the mission must be declared by regulation to be a "designated overseas mission"; and, secondly, the mission must be authorised to operate within certain capacities as set out in a written instrument signed by the Minister for Foreign Affairs. These conditions would also be subject to the agreement of the government, in consultation with others concerned. Clearly, however, the bill is not intended to cover missions in Australia representing purely political entities, such as the Palestine Liberation Organisation, or purely commercial entities such as Hutt River Province.

The form and operation of the bill is modelled on the International Organizations (Privileges and Immunities) Act, in so far as the bill provides the framework and criteria within which privileges and immunities are set out and may be accorded. The bill itself would be given effect by the regulations made under it.

Schedules to the bill set out a broad range of privileges and immunities of possible application to designated overseas missions. They represent the upper limit, so to speak, of the privileges and immunities which might be conferred upon the premises of a designated overseas mission and the persons associated with it. The privileges and immunities listed are along the lines of those conferred by the Vienna Conventions on Diplomatic and Consular Relations. However, under no circumstances would a designated overseas mission or any person associated with it be entitled to privileges and immunities which go beyond those conferred by the Vienna conventions upon diplomatic or consular mission[s] and their staff.

It would be possible for the regulations to confer upon designated overseas missions any or all of the privileges and immunities listed, either unconditionally or subject to limitations or conditions. They would be specifically tailored to provide a precise and comprehensive account of the privileges and immunities applicable in each case. The use of the regulations in this way is consistent with the precedent already set by the International Organizations (Privileges and Immunities) Act. Furthermore, they maintain flexibility within the legislation and allow the government to limit or qualify the application of privileges and immunities on a case by case basis.

It is anticipated that the first occasion for the application of the legislation would arise in the context of the proposed establishment of a Hong Kong Economic and Trade Office in Sydney in the second half of 1995. A Hong Kong Economic and Trade Office would cover bilateral commercial relations between Hong Kong and Australia and conduct a liaison function where multilateral trade issues, including WTO and APEC, are concerned. The application of the Overseas Missions (Privileges and Immunities) Bill may result in a loss of revenue at both the Commonwealth and state or territory levels due to certain privileges of a financial nature which could be accorded to the premises of a designated overseas mission and persons associated with that mission.

The privileges which could be accorded include exemptions from taxation levied directly against the mission regarding its property and personal exemptions from taxation for persons associated with the mission. It is preferable to allow for the possibility of such exemptions from taxation in order to maintain

consistency with the application of privileges under the Vienna Conventions on Diplomatic and Consular Relations and to enable missions to operate effectively within Australia.

It is difficult to speculate at this stage on the possible losses to be incurred. Any losses to revenue would be determined by the number of missions which are entitled to financial privileges under the legislation and the extent of the privileges accorded to such missions. However, any loss in revenue would be far outweighed by the potential for economic gain which the presence and operations of such missions would incur.

The missions would boost Australia's bilateral trade interests and provide greater scope for Australia regarding multilateral trade opportunities within the region. Furthermore, the bill would create a basis for the reciprocal extension of privileges and immunities, enabling the Australian government to reduce the costs of Australian offices in the territory represented by the designated overseas mission.

In short, the Overseas Missions (Privileges and Immunities) Bill seeks to provide a framework to enable privileges and immunities to be conferred on overseas missions in Australia and their staff. It is an adaptation of fundamental principles of international law to the reality of our regional environment.

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

This bill is intended to make consequential amendments to Commonwealth acts which will enable the effective implementation of the principal bill; that is, the Overseas Missions (Privileges and Immunities) Bill 1995. As has been noted already today, the principal bill allows privileges and immunities to be accorded to missions representing self governing or autonomous foreign territories in Australia and their staff. It flows from existing legislation which accords privileges and immunities to diplomatic and consular missions and international organisations in Australia, and their staff. However, the intention of the principal bill is to adapt this existing legislation to the realities of our changing economic regional climate.

In order to ensure the effective implementation of the principal bill, the consequential amendments bill would make amendments to a number of Commonwealth acts. In particular, amendments would be made to the Australian Protective Service Act 1987, the Crimes (Internationally Protected Persons) Act 1976, the Diplomatic and Consular Missions Act 1978 and the Public Order (Protection of Persons and Property) Act 1971.

Broadly speaking, these acts provide protection to the premises of, and persons associated with, diplomatic and consular missions and international organisations. The consequential amendments bill would extend their scope to provide appropriate protection to the premises of missions established under the principal bill, and their staff.

The Australian Protective Service Act establishes the Australian Protective Service and sets out its functions, which include, among other things, the protection of property in which a foreign country or an international organisation has an interest. The functions of the Australian Protective Service also include the protection of internationally protected persons. The consequential

amendments bill would extend this act to protect property in which a mission established in accordance with the principal bill has an interest.

Secondly, the Crimes (Internationally Protected Persons) Act enacts into Australia's domestic law the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomatic agents. Under the act, as it presently stands, the Governor General may make regulations declaring persons who are not specifically mentioned in the convention to be internationally protected persons for example, persons associated with international organisations. The consequential amendments bill would expand the application of the act and allow the Governor General to make regulations declaring certain persons associated with missions established under the principal bill to be internationally protected persons and afforded protection as such.

Thirdly, the Diplomatic and Consular Missions Act prohibits the improper use of diplomatic and consular signs and titles which falsely purport to represent a diplomatic or consular mission. The consequential amendments bill would expand the protection afforded by the Diplomatic and Consular Missions Act to cover missions established under the principal bill. It would also ensure that the authorised activities of a mission established under the principal bill would not amount to prohibited activities in so far as they may overlap with activities carried out by diplomatic and consular missions, and vice versa.

Finally, the Public Order (Protection of Persons and Property) Act enacts into domestic law Australia's international obligations to preserve public order in respect of the premises and personnel of diplomatic and consular missions and international organisations. The consequential amendments bill would extend protection under that act to missions established under the principal bill, consistent with these existing international obligations.

Amendment of the Australian Protective Service Act, expanding the functions of the Australian Protective Service to cover missions established under the principal bill and to certain persons associated with it, may require an increase in the resources devoted to the 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, I emphasise that the economic gain which would result from the presence and operations of the missions given privileges and immunities under the Overseas Missions (Privileges and Immunities) Bill would outweigh the costs of extending the protective service to those missions. The other amendments would have no financial impact.

To conclude, the consequential amendments bill would facilitate the effective implementation of the Overseas Missions (Privileges and Immunities) Bill. The consequential amendments would extend protections afforded by existing legislation to missions and their staff established under the principal bill.

Vienna Convention on Diplomatic Relations — Obligations of Receiving State

The decision by the French Government to resume nuclear testing sparked a series of protests around the country, including many which were directed at the Embassy of France in Canberra.

As a result of this protest action, a number of Notes were exchanged between the Department of Foreign Affairs and Trade and the Embassy of France with regard to Australia's obligations under the Vienna Convention on Diplomatic Relations to protect the Embassy and its staff. Under Article 22, Australia 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 the impairment of its dignity".

In a Note dated 8 September 1995, the Embassy of France advised the Department of Foreign Affairs and Trade that an Australia Post delivery van had been unable to deliver the mail because of the presence of a union picket which had prevented the access of the delivery vehicles to the Chancery. The Embassy of France further informed the Department that the union picket was preventing the normal functioning of the Embassy.

The following are extracts from a Note dated 13 September 1995, which the Department sent by way of reply to the Embassy of France:

...on those days when Australia Post has been unable to deliver the mail to the Embassy, the Embassy has collected the mail from the Post Office. As the mail is accessible to the Embassy, the Department does not accept that non-delivery constitutes a failure to comply with the Vienna Conventions...

(The Department) regrets if pickets represent an inconvenience to the Embassy. The Department does not accept however that the presence or action of pickets prevents the functioning of the Embassy. It also notes that picketing to date has not been continuous, but random. There have been no reports from the police of any threatening behaviour, or illegal acts such as preventing access to the Embassy. It is not illegal for pickets to talk to visitors, to explain their presence; whether in the light of that a visitor, or provider of goods or services then chooses to enter or not to enter is a matter of individual choice, and in those circumstances the Department does not accept that this represents any contravention of the Conventions. It is the right of individuals to provide, to not provide or to withdraw their services.

In a Note dated 20 October 1995, the Embassy of France further informed the Department that a person had been filming staff members leaving the diplomatic mission. In reply by Note dated 23 October 1995, the Department advised the Embassy of France its view that the photographing of diplomatic premises did not represent a threat to, nor did it violate, the principle of protection of diplomatic premises or staff.

The Department also advised the Embassy of France that it was for the receiving state to judge the level of protection appropriate for a diplomatic mission, taking into account the assessed threat and the powers accorded by the law.

Lebanon — Reopening of Embassy

On 27 June 1995, the Minister for Foreign Affairs, Senator Evans, and the Minister for Immigration and Ethnic Affairs, Senator Bolkus, issued the following statement:

The Minister for Foreign Affairs, Senator Gareth Evans and the Minister for Immigration and Ethnic Affairs, Senator Nick Bolkus will reopen the Australian Embassy in Beirut on 18 July 1995.

The embassy reopening comes at a time of renewed promise within Lebanon and the wider region. Australian staff were withdrawn from the embassy in 1984.

"An era of growth and prosperity beckons in the new Lebanon. We applaud the enthusiasm with which the Lebanese people have embraced the process of national reconciliation and are heartened by the reconstruction now occurring. It is clear that the renowned capabilities and talents of the Lebanese people are once again finding their fullest expression, to the benefit of their country and, ultimately, to the wider region," the Ministers said.

"The Australian Government is encouraging the Lebanese Australian community to develop new trade and investment opportunities in Lebanon. The Beirut embassy will serve to enhance those opportunities by strengthening dialogue and the links between the two countries. The embassy will support Australian commercial activity, as well as providing visa and consular services."

"In looking forward to a strengthened relationship, Australia is well aware of the economic and political challenges that lie ahead for Lebanon. Australia will maintain its full support for Lebanon's independence and continue to support the early implementation of UN Security Council Resolution 425, calling for the withdrawal of Israeli troops from Southern Lebanon. We oppose any activity in Lebanon which compromises Lebanese sovereignty. We look forward to a time when comprehensive peace will be enjoyed throughout the region, with Lebanon as an important beneficiary of that situation," the Ministers said.

The signing of the Taif Accord in October 1991 signalled the end of prolonged civil conflict in Lebanon. Since then, Lebanon has experienced a resurgence in commercial and business activity, a regeneration of infrastructure and a renewal of interest by foreign investors.

Albania — Diplomatic and Consular Representation in Australia and in Albania

On 28 March 1995, in the House of Representatives, the Minister representing the Minister for Foreign Affairs, Mr Bilney, answered a question upon notice from Mr Slipper (Fisher, Liberal Party). The text of the question and answer follow (House of Representatives, *Debates*, vol 200, p 2334):

Mr Slipper asked the Minister representing the Minister for Foreign Affairs, upon notice, on 28 February 1995:

- (1) What is the level of diplomatic relations between Australia and the Republic of Albania.
- (2) Is a proposal to establish an Australian (a) embassy, (b) consulate (c) consulate general or (d) honorary consulate in Albania before the Government.
- (3) Is a proposal for Albania to establish an (a) embassy (b) consulate (c) consulate general or (d) honorary consulate in Australia before the Government.
- (4) Will the Government establish an Australian (a) embassy, (b) consulate, (c) consulate general or (d) honorary consulate in Tiran[a], Albania.

(5) Would the Government permit the establishment of an (a) embassy, (b) consulate, (c) consulate general or (d) honorary consulate in Australia; if so, on what basis.

(6) Has the Albanian Government approached the Australian Government with a view to upgrading diplomatic relations; if so, what are the details.

Mr Bilney—The Minister for Foreign Affairs has provided the following answers to the honourable member's question:

(1) The Australian Ambassador to Italy, based in Rome, is accredited to Albania. Albania's Ambassador to China is accredited to Australia on a non-resident basis.

(2) There is no proposal before the Government to establish an Australian (a) embassy, (b) consulate, or (c) consulate general in Albania, but the possibility of appointing an honorary consul in Tirana is being examined.

(3) No.

(4) The Government does not intend to establish an (a) embassy, (b) consulate or (c) consulate general in Albania in the foreseeable future. In relation to an honorary consul, please see (2) above.

(5) The Government has no objection to the establishment by Albania of a diplomatic or consular mission in Australia, in accordance with the provisions of the Vienna Conventions on Diplomatic and Consular Relations.

(6) There has been no formal approach from the Albanian Government to upgrade diplomatic relations, although there has been discussion of how contacts between the two countries might be facilitated.

Former Yugoslav Republic of Macedonia — Diplomatic Representation in Australia

On 20 September 1995, in the House of Representatives, the Minister representing the Minister for Immigration and Ethnic Affairs, Mr Baldwin, answered a question upon notice from Mr Cameron (Stirling, Liberal Party), concerning the Former Yugoslav Republic of Macedonia (FYROM). The following is an extract from the text of the question and answer (House of Representatives, *Debates*, vol 204, p 1429):

Mr Cameron asked the Minister representing the Minister for Immigration and Ethnic Affairs, upon notice, on 28 June 1995:

(3) Will FYROM establish a diplomatic mission in Australia.

Mr Baldwin—The Minister for Immigration and Ethnic Affairs has provided the following answer to the honourable member's question:

I am advised that: ...

(3) The Australian Government has made it clear that the establishment of a consular or diplomatic mission in Australia could only be on the conditions laid down in Senator Evans' ministerial statement of 14 March 1994. It would have to be appropriately described as the mission "of the Former Yugoslav Republic of Macedonia" and would be unable to display any contentious flag or other symbols.

Discussions have taken place as to ways in which, consistent with these conditions, the interests of FYROM and residents from FYROM might be accommodated, but the matter remains unresolved at this time.

On 23 October 1995, the Acting Minister for Foreign Affairs, Senator McMullan, issued a media release concerning Australia's decision to enter into diplomatic relations with the FYROM. For further information on this topic, see p 380 of this volume. The text of the media release follows:

Following the Interim Accord between Greece and the Former Yugoslav Republic of Macedonia (FYROM) of 13 September 1995 which resolves most of the outstanding matters in dispute between the two countries, Australia and FYROM have decided to enter into diplomatic relations, for the time being on a non-resident basis.

The establishment of official links will enable the two countries, through periodic visits of officers, to perform the full range of diplomatic and consular functions, including inter governmental relations, commercial exchanges, issue of passports and personal legal matters.

There will at this stage be no permanent office of either country in the other. Accordingly, matters relating to symbols, flags and signs referred to in Australian Government statements in February and March 1994 will not arise. In any event, on 5 October 1995 the FYROM Parliament passed a law for the incorporation of a new symbol on its national flag.

The Government has long been conscious of the difficulties being created for Australians of FYROM origin lacking access to consular services, and we hope and expect that the new arrangement will remove that problem.

We hope very much that the remaining major issue still unresolved, that of nomenclature, will be settled in the same spirit of constructive cooperation that produced the recent agreement.

Former Socialist Federal Republic of Yugoslavia — Diplomatic and Consular Representation in Australia

On 28 March 1995, the Minister representing the Minister for Foreign Affairs in the House of Representatives, Mr Bilney, answered a question upon notice from Mr Filing (Moore, Liberal Party) (House of Representatives, *Debates*, vol 200, p 2330). The text of the question and answer follow:

Mr Filing asked the Minister representing the Minister for Foreign Affairs, upon notice, on 9 February 1995:

- (1) Is it a fact that Australia does not officially recognise the Republic of Yugoslavia.
- (2) Does a Yugoslav Embassy operate in Australia; if so why.
- (3) Is the Yugoslav Embassy permitted to hold consular days; if so why.

Mr Bilney—The Minister for Foreign Affairs has provided the following answer to the honourable member's question:

- (1) Australia has not accepted the claim of the Republics of Serbia and Montenegro, which have established the Federal Republic of Yugoslavia (the FRY), to continue the international personality of the former Socialist Federal Republic of Yugoslavia (SFRY).

(2) The Embassy in Canberra (and the Consulate General in Sydney of the former SFRY) continue to operate. However, in accordance with UN Security Council Resolution 757 of May 1992, the Government reduced the size of that diplomatic and consular representation. The Embassies in Canberra and Belgrade are no longer headed by ambassadors, but by charges d'affaires; the number of home-based officers was reduced; and official dealings are only at a working level. In considering the question of the SFRY's diplomatic and consular representation (as well as that of the Australian Embassy in Belgrade), the Government has had in mind the need to provide a full range of consular and other services to our respective communities.

(3) Officers of foreign missions have consular responsibilities in accordance with the Vienna Convention on Consular Relations. The term "consular days" refers to visits by mission officials to locations within their jurisdiction. As such, consular days are a normal part of mission work and the question of permitting them does not arise.