



# **Diplomatic and Consular Missions Act 1978**

**Act No. 98 of 1978 as amended**

This compilation was prepared on 26 May 2001  
taking into account amendments up to Act No. 35 of 2001

The text of any of those amendments not in force  
on that date is appended in the Notes section

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra



---

## Contents

1	Short title [ <i>see</i> Note 1] .....	1
2	Commencement [ <i>see</i> Note 1] .....	1
3	Interpretation.....	1
3A	Application of the <i>Criminal Code</i> .....	2
4	Injunctions to restrain false claims about diplomatic or consular status or designated overseas mission status .....	2
5	Removal of signs etc. ....	6
6	Certificates by Minister.....	7
7	Jurisdiction of the Court.....	8

## Notes

9



---

# An Act to prevent the improper use of diplomatic and consular signs and titles and to prevent the improper use of signs and titles of designated overseas missions

## 1 Short title [see Note 1]

This Act may be cited as the *Diplomatic and Consular Missions Act 1978*.

## 2 Commencement [see Note 1]

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

## 3 Interpretation

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

**authorised capacity**, in relation to a designated overseas mission, means a capacity specified in an instrument in force under paragraph 4(1)(b) of the *Overseas Missions (Privileges and Immunities) Act 1995*, where the instrument relates to the mission.

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

**Court** means the Federal Court of Australia.

**designated overseas mission** has the same meaning as in the *Overseas Missions (Privileges and Immunities) Act 1995*.

**foreign territory** has the same meaning as in the *Overseas Missions (Privileges and Immunities) Act 1995*.

**mission** means a mission, agency or office.

**office of a mission** means an office of a mission or of a member of a mission, whether designated as an embassy, a chancery or a consulate, or in any other manner.

**premises** includes a part of premises.

- (2) A reference in this Act to conduct shall be read as a reference to the doing of any act or thing either alone or in association with the doing of any other act or thing.

### **3A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **4 Injunctions to restrain false claims about diplomatic or consular status or designated overseas mission status**

- (1) The Court may, on the application of the Attorney-General, grant an injunction restraining a person:
- (a) from engaging, or attempting to engage, in conduct that:
    - (i) is, in relation to a diplomatic or consular mission established in Australia with the consent of the Commonwealth, conduct to which this subsection applies by virtue of subsection (2); or
    - (ii) is, in relation to a designated overseas mission of a foreign territory, conduct to which this subsection applies by virtue of subsection (2A) or (2B);
  - (b) from aiding, abetting, counselling or procuring a person to engage in any such conduct;
  - (c) from inducing, or attempting to induce, a person, whether by threats, promises or otherwise, to engage in any such conduct; or
  - (d) from being in any way directly or indirectly a party to the engaging by a person in any such conduct.
- (2) The conduct that is, in relation to a diplomatic or consular mission of a country established in Australia with the consent of the Commonwealth, conduct to which subsection (1) applies is:
- (a) conduct by way of displaying, or causing or permitting to be displayed, either within, on or outside premises (other than premises at which an office of that mission or the residence of a member of that mission is located) any sign, flag or insignia that states, implies or is reasonably capable of being

taken to imply that there is located at the premises an office of a mission, or the residence of a member of a mission, that represents, in a diplomatic or consular capacity, that country or a part of that country, the people of that country or of a part of that country or a government of that country or of a part of that country; or

- (b) conduct by way of making or publishing, or causing or permitting to be made or published, any representation that states, implies or is reasonably capable of being taken to imply that there is located in Australia a mission (other than the diplomatic or consular mission of that country) or that a person in Australia occupies a position in a mission (other than the diplomatic or consular mission of that country), that represents, in a diplomatic or consular capacity, that country or a part of that country, the people of that country or of a part of that country or a government of that country or of a part of that country;

other than:

- (c) conduct engaged in by a member of the staff (including the head) of a designated overseas mission in carrying out an authorised capacity of the designated overseas mission; or
- (d) conduct engaged in at the request or direction of a member of the staff (including the head) of a designated overseas mission, where the conduct would have been covered by paragraph (c) if it had been engaged in by that staff member.

(2A) A person engages in conduct that is, in relation to a designated overseas mission of a foreign territory, conduct to which subsection (1) applies if:

- (a) the person displays, or causes or permits to be displayed, any sign, flag or insignia; and
- (b) the sign, flag or insignia is displayed within, on or outside any premises; and
- (c) the premises are not:
  - (i) premises of the designated overseas mission; or
  - (ii) the residence of a member of the staff (including the head) of the designated overseas mission; and
- (d) the sign, flag or insignia states, implies or is reasonably capable of being taken to imply that there is located at the premises an office of a mission, or the residence of a

member of a mission, that represents, in a capacity that corresponds to an authorised capacity of the designated overseas mission:

- (i) that foreign territory or a part of that foreign territory;  
or
  - (ii) the people of that foreign territory or of a part of that foreign territory; or
  - (iii) a government of that foreign territory or of a part of that foreign territory; and
- (e) the conduct is neither:
- (i) engaged in, in a diplomatic or consular capacity, by a member of a diplomatic or consular mission established in Australia with the consent of the Commonwealth;  
nor
  - (ii) engaged in at the request or direction of a member of such a diplomatic or consular mission, where the conduct would have been covered by subparagraph (i) if it had been engaged in by the member.

(2B) A person also engages in conduct that is, in relation to a designated overseas mission of a foreign territory, conduct to which subsection (1) applies if:

- (a) the person makes or publishes, or causes or permits to be made or published, any representation; and
- (b) the representation states, implies or is reasonably capable of being taken to imply that:
  - (i) there is located in Australia a mission (other than the designated overseas mission of that foreign territory);  
or
  - (ii) a person in Australia occupies a position in a mission (other than the designated overseas mission of that foreign territory);

that represents, in a capacity that corresponds to an authorised capacity of the designated overseas mission:

- (iii) that foreign territory or a part of that foreign territory;  
or
- (iv) the people of that foreign territory or of a part of that foreign territory; or



- (v) a government of that foreign territory or of a part of that foreign territory; and
- (c) the conduct is neither:
  - (i) engaged in, in a diplomatic or consular capacity, by a member of a diplomatic or consular mission established in Australia with the consent of the Commonwealth; nor
  - (ii) engaged in at the request or direction of a member of such a diplomatic or consular mission, where the conduct would have been covered by subparagraph (i) if it had been engaged in by the member.
- (3) Where, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (4) The Court may rescind or vary an injunction under subsection (1) or (3).
- (5) Where an application is made to the Court for the granting of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in subsection (1), the Court may:
  - (a) if it is satisfied that the person has engaged in conduct of that kind—grant an injunction under subsection (1) restraining the person from engaging in conduct of that kind; or
  - (b) if, in the opinion of the Court, it is desirable to do so—grant an interim injunction under subsection (3) restraining the person from engaging in conduct of that kind.
- (6) Where an application is made to the Court for the granting of an injunction restraining a person from engaging in conduct of a particular kind, being conduct referred to in subsection (1), the Court may:
  - (a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—grant an injunction under subsection (1) restraining the person from engaging in conduct of that kind; or

- (b) if, in the opinion of the Court, it is desirable to do so—grant an interim injunction under subsection (3) restraining the person from engaging in conduct of that kind; whether or not the person has previously engaged in conduct of that kind.
- (7) Where the Attorney-General makes an application to the Court for the granting of an injunction under this section, the Court shall not require the Attorney-General or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

## **5 Removal of signs etc.**

- (1) Where, in a proceeding under section 4 for an injunction (including an interim injunction), the Court has found that conduct by way of displaying a sign or flag, or insignia, either within, on or outside premises, or by way of causing or permitting a sign or flag, or insignia, to be so displayed, constitutes conduct that is, in relation to a diplomatic or consular mission or a designated overseas mission, conduct to which subsection 4(1) applies, the Court may, upon application made by the Attorney-General, issue a warrant authorizing the Sheriff, or a Deputy Sheriff, of the Court, with such assistance as he deems necessary, to remove the sign, flag or insignia from the premises, or to obliterate the sign, flag or insignia on the premises, as the case requires, and, at any time and from time to time while the warrant is in force, to remove or to obliterate, as the case requires, any similar or substantially similar sign, flag or insignia that may subsequently be displayed, within, on or outside the premises.
- (2) An application for the issue of a warrant under subsection (1) may be included in an application to the Court under section 4 for an injunction (including an interim injunction) or may be made to the Court as a separate application.
- (3) A warrant issued by the Court under subsection (1) may authorize entry, if necessary by force, onto or into the premises for the purpose of removing or obliterating the sign, flag, or insignia.
- (4) Where a warrant under this section authorizes entry onto or into premises, the warrant shall state whether entry is authorized to be

made at any time of the day or night or only during specified hours of the day or night.

- (5) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months, but may be revoked by the Court at any time before the expiration of the period so specified.
- (6) Subsection (5) shall not be construed as preventing the issue of a further warrant.
- (7) Where a sign or flag, or insignia, is removed by the Sheriff or a Deputy Sheriff in pursuance of a warrant issued under this section, it shall be destroyed or otherwise disposed of in such manner as the Minister directs.

## **6 Certificates by Minister**

- (1) The Minister may, for the purposes of this Act, give a certificate, in writing:
  - (a) certifying that a specified mission is, or is not, a diplomatic or consular mission of a country established in Australia with the consent of the Commonwealth;
  - (b) certifying that there is, or is not, located at specified premises an office of a diplomatic or consular mission of a country established in Australia with the consent of the Commonwealth; or
  - (c) certifying that there is, or is not, located at specified premises the residence of a member of a diplomatic or consular mission of a country established in Australia with the consent of the Commonwealth.
- (1A) The Minister may, for the purposes of this Act, give a written certificate:
  - (a) certifying that a specified mission is, or is not, a designated overseas mission of a foreign territory; or
  - (b) certifying that there is, or is not, located at specified premises an office of a designated overseas mission of a foreign territory; or
  - (c) certifying that there is, or is not, located at specified premises the residence of a member of the staff (including

the head) of a designated overseas mission of a foreign territory; or

(d) certifying that a specified capacity is an authorised capacity of a designated overseas mission of a foreign territory.

(2) In any proceedings under section 4 or 5, a certificate given under this section is evidence of the fact certified.

## **7 Jurisdiction of the Court**

Jurisdiction is conferred on the Court to hear and determine applications under sections 4 and 5.

**Table of Acts****Notes to the *Diplomatic and Consular Missions Act 1978*****Note 1**

The *Diplomatic and Consular Missions Act 1978* as shown in this compilation comprises Act No. 98, 1978 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Diplomatic and Consular Missions Act 1978</i>	98, 1978	24 Aug 1978	24 Aug 1978	
<i>Overseas Missions (Privileges and Immunities) (Consequential Amendments) Act 1995</i>	58, 1995	28 June 1995	28 June 1995	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1-3 and Schedule 1 (items 1, 4, 6, 7, 9-11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001</i>	35, 2001	28 Apr 2001	26 May 2001	S. 4



---

**Table of Amendments**


---

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 58, 1995
S. 3.....	am. No. 58, 1995
S. 3A .....	ad. No. 35, 2001
Heading to s. 4 .....	am. No. 58, 1995
S. 4.....	am. No. 58, 1995
S. 5.....	am. No. 58, 1995; No. 137, 2000
S. 6.....	am. No. 58, 1995

## **Table A**

---

### **Table A**

#### **Application, saving or transitional provisions**

*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences)*  
*Act 2000 (No. 137, 2000)*

### **Schedule 2**

#### **418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

#### **419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-



---

**Table A**

*Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001* (No. 35, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.