

Diplomatic and Consular Missions Act 1978

No. 98, 1978

**Compilation No. 5**

**Compilation date:** 21 October 2016

**Includes amendments up to:** Act No. 61, 2016

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**About this compilation**

**This compilation**

This is a compilation of the *Diplomatic and Consular Missions Act 1978* that shows the text of the law as amended and in force on 21 October 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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

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

2 Commencement

 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 the Sheriff or Deputy Sheriff 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 prima facie 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.

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 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.

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

Endnote 3—Legislation history

| Act | Number and year | Assent date | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Diplomatic and Consular Missions Act 1978 | 98, 1978 | 24 Aug 1978 | 24 Aug 1978 |  |
| Overseas Missions (Privileges and Immunities) (Consequential Amendments) Act 1995 | 58, 1995 | 28 June 1995 | 28 June 1995 | — |
| Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 | 137, 2000 | 24 Nov 2000 | Sch 2 (items 175, 418, 419): 24 May 2001 (s 2(3)) | Sch 2 (items 418, 419) |
| Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001 | 35, 2001 | 28 Apr 2001 | 26 May 2001 | s 4  |
| Statute Law Revision Act 2008 | 73, 2008 | 3 July 2008 | Sch 4 (item 251): 4 July 2008 (s 2(1) item 64) | — |
| Statute Update Act 2016 | 61, 2016 | 23 Sept 2016 | Sch 3 (item 18): 21 Oct 2016 (s 2(1) item 1) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| Title  | am. No. 58, 1995 |
| s. 3  | am. No. 58, 1995 |
| s. 3A  | ad. No. 35, 2001 |
| s. 4  | am. No. 58, 1995 |
| s. 5  | am. No. 58, 1995; No. 137, 2000; No. 73, 2008 |
| s. 6  | am. No. 58, 1995; No 61, 2016 |