

DIPLOMATIC AND CONSULAR MISSIONS ACT 1978

No. 98 of 1978

An Act to prevent the improper use of diplomatic and consular signs and titles.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

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| Short title | 1. This Act may be cited as the <i>Diplomatic and Consular Missions Act</i> 1978. ¹ |
| Commence-
ment | 2. This Act shall come into operation on the day on which it receives the Royal Assent. ¹ |
| Interpret-
ation | <p>3. (1) In this Act, unless the contrary intention appears—</p> <p>“country” means a country other than Australia or an external Territory;</p> <p>“Court” means the Federal Court of Australia;</p> <p>“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;</p> <p>“premises” includes a part of premises.</p> <p>(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.</p> |
| Injunctions
to restrain
false claims
to diplomatic
or consular
status | <p>4. (1) The Court may, on the application of the Attorney-General, grant an injunction restraining a person—</p> <ul style="list-style-type: none">(a) from engaging, or attempting to engage, in conduct that is, in relation to a diplomatic or consular mission established in Australia with the consent of the Commonwealth, conduct to which this sub-section applies by virtue of sub-section (2);(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 sub-section (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.

(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 sub-section (1).

(4) The Court may rescind or vary an injunction under sub-section (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 sub-section (1), the Court may—

- (a) if it is satisfied that the person has engaged in conduct of that kind—grant an injunction under sub-section (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 sub-section (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 sub-section (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 sub-section (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 sub-section (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.

Removal of
signs, &c.

5. (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 of a country established in Australia with the consent of the Commonwealth, conduct to which sub-section 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 sub-section (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 sub-section (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) Sub-section (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.

(8) A person shall not, without reasonable excuse, obstruct or hinder a person acting in pursuance of a warrant issued under this section.

Penalty: \$200.

6. (1) The Minister may, for the purposes of this Act, give a certificate, in writing— Certificates
by Minister

- (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.

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

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

NOTE

1. Act No. 98, 1978; assented to 24 August 1978.