



Overseas Missions (Privileges and Immunities) Act 1995

No. 57, 1995 as amended

Compilation start date: 29 June 2013

Includes amendments up to: Act No. 103, 2013

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About this compilation

The compiled Act

This is a compilation of the *Overseas Missions (Privileges and Immunities) Act 1995* as amended and in force on 29 June 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 5 August 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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An Act about privileges and immunities of certain overseas missions, and for related purposes

1 Short title

This Act may be cited as the *Overseas Missions (Privileges and Immunities) Act 1995*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Definitions

In this Act:

acquisition has the meaning given by section 195-1 of the GST Act.

approved form has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

Australia, when used in a geographical sense, includes the external Territories.

Commissioner means the Commissioner of Taxation.

designated overseas mission has the meaning given by section 4.

foreign territory means:

- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; or
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; or
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

indirect tax means:

- (a) GST within the meaning of section 195-1 of the GST Act; or
- (b) luxury car tax within the meaning of section 27-1 of the Luxury Car Tax Act; or
- (c) wine equalisation tax within the meaning of section 33-1 of the Wine Equalisation Tax Act.

Luxury Car Tax Act means the *A New Tax System (Luxury Car Tax) Act 1999*.

mission means a mission, agency or office.

overseas mission means an official mission established in Australia to represent a foreign territory in one or more capacities.

Wine Equalisation Tax Act means the *A New Tax System (Wine Equalisation Tax) Act 1999*.

4 Designated overseas missions

- (1) For the purposes of this Act, an overseas mission is a **designated overseas mission** if:
 - (a) the overseas mission is declared by the regulations to be a designated overseas mission; and
 - (b) there is in force a written instrument signed by the Minister authorising the overseas mission to operate in Australia in one or more specified capacities.
- (2) If an instrument is made under paragraph (1)(b), the Minister must notify the making of the instrument in the *Gazette*.

5 Application to external Territories

This Act extends to each external Territory.

6 Privileges and immunities of designated overseas missions

The regulations may confer on a designated overseas mission any or all of the privileges and immunities set out in Schedule 1.

7 Privileges and immunities of persons associated with designated overseas missions

The regulations may confer on:

- (a) the head of a designated overseas mission; or
- (b) a member of the staff of a designated overseas mission; or
- (c) a member of the family of a person covered by paragraph (a) or (b), where the family member is part of the person's household;

any or all of the privileges and immunities set out in Schedule 2.

8 Privileges and immunities may be conferred subject to limitations or conditions

- (1) Privileges and immunities may be conferred by the regulations either:
 - (a) unconditionally; or
 - (b) subject to any limitations or conditions specified in the regulations.
- (2) This section does not affect the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

9 Scope of privileges and immunities

- (1) Privileges and immunities conferred by the regulations are privileges and immunities in relation to the operation of:
 - (a) the laws of the Commonwealth (including Acts other than this Act); and
 - (b) the laws of the States and Territories.
- (2) Despite:
 - (a) section 177-5 of the GST Act; and
 - (b) section 21-5 of the Luxury Car Tax Act; and

(c) section 27-25 of the Wine Equalisation Tax Act; indirect tax that would be payable on an importation under one of those Acts is not payable on an importation covered by an immunity from taxation (including customs duties) conferred by the regulations.

10 Waiver

The regulations may deal with the waiver of any privileges or immunities conferred by the regulations.

11 Evidentiary certificate

- (1) The Minister may give a written certificate certifying any fact relating to whether a mission or person:
 - (a) is entitled to any privileges or immunities conferred by the regulations; or
 - (b) was at any time entitled to any privileges or immunities conferred by the regulations; or
 - (c) was during any period entitled to any privileges or immunities conferred by the regulations.
- (2) In any proceedings, a certificate given under this section is *prima facie* evidence of the facts certified.

12 Exemption from customs duty and excise duty

- (1) The regulations may provide that:
 - (b) a duty of customs; or
 - (c) a duty of excise;is not payable on goods that are for:
 - (d) the official use of a designated overseas mission; or
 - (e) the personal use of a person referred to in section 7.
- (2) Regulations made for the purposes of subsection (1) may provide for an exemption from customs duty or excise duty either:
 - (a) unconditionally; or
 - (b) subject to any limitations or conditions specified in the regulations.

- (3) The regulations may deal with the waiver of an exemption provided for by regulations made for the purposes of subsection (1).
- (4) Subsection (2) does not affect the application of subsection 33(3A) of the *Acts Interpretation Act 1901*.

12A Indirect tax concession scheme

- (1) If:
 - (a) an acquisition covered by regulations made for the purposes of this section is made:
 - (i) by or on behalf of the head of a designated overseas mission that has been granted an exemption (to some extent) from taxation under the regulations; or
 - (ii) by a person referred to in section 7, or another person, who is covered by regulations made for the purposes of this section; and
 - (b) at the time of the acquisition, it was intended for:
 - (i) the official use of the mission; or
 - (ii) a use covered by regulations made for the purposes of this section;

the Commissioner must, on behalf of the Commonwealth and subject to subsection (3), pay to the head of the mission (or a person in a class of persons determined by the Minister) an amount equal to the amount of indirect tax payable (if any) in respect of the supply of that acquisition.

- (2) A claim for an amount covered by subsection (1) must be in the approved form.
- (3) The amount is payable:
 - (a) in accordance with the conditions and limitations; and
 - (b) within the period and in the manner;set out in regulations made for the purposes of this section.
- (4) Regulations made for the purposes of subsection (3) may permit the Commissioner to determine the period within which, and the manner in which, the amount is payable.

Section 13

(5) A determination under subsection (1) is a legislative instrument.

13 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Privileges and immunities of designated overseas missions

Section 6

1. Inviolability of premises of, or occupied by, the mission.
2. Inviolability of property and assets of, or in the custody of, or administered by, the mission.
3. Exemption of property and assets of, or in the custody of, or administered by, the mission from restrictions and controls.
4. Inviolability of official documents and archives of the mission.
5. Freedom of communication for all official purposes of the mission.
6. Absence of censorship of official communications of the mission.
7. The right to use codes and to send and receive official documents by courier or in a sealed bag, and to have such a courier or bag treated as a diplomatic courier or a diplomatic bag, as the case may be.
8. Exemption from taxation of fees and charges imposed by the mission in the course of its official duties.
9. Exemption from taxation of premises of, or occupied by, the mission, where the taxation is imposed directly on the mission or on the foreign territory that the mission represents.
10. Exemption from taxation of the head of mission's residence, where the taxation is imposed directly on the mission or on the foreign territory that the mission represents.
11. Exemption from taxation of the residence of a member of the staff of the mission, where the taxation is imposed directly on the mission or on the foreign territory that the mission represents.
12. Exemption from taxation of articles for the official use of the mission.

Schedule 2—Privileges and immunities of persons associated with designated overseas missions

Section 7

1. Inviolability of private residences.
2. Exemption from taxation.
3. Exemption from the application of laws relating to immigration or work permits.
4. Exemption from obligations under social security laws.
5. Exemption from inspection of personal baggage accompanying persons entering or leaving Australia, other than inspection for purposes relating to quarantine.
6. Immunity from arrest, search or detention.
7. Immunity from criminal, civil and administrative jurisdiction.
8. Exemption from obligations to give evidence in judicial or administrative proceedings.
9. Exemption from restrictions on the export of movable property of a deceased person.
10. Inviolability of papers, correspondence and property.

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Overseas Missions (Privileges and Immunities) Act 1995*.

| Act | Number and year | Assent date | Commencement date | Application, saving and transitional provisions |
|---|-----------------|--------------|---|---|
| Overseas Missions (Privileges and Immunities) Act 1995 | 57, 1995 | 28 June 1995 | 28 June 1995 | |
| A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999 | 177, 1999 | 22 Dec 1999 | Schedule 7 (items 29–37): (a) | — |
| Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006 | 101, 2006 | 14 Sept 2006 | Schedule 5 (items 130, 131) and Schedule 6 (items 5–11): Royal Assent | Sch. 6 (items 5–11) |
| Statute Law Revision Act 2013 | 103, 2013 | 29 June 2013 | Schedule 3 (items 125, 343): Royal Assent | Sch. 3 (item 343) |

(a) The *Overseas Missions (Privileges and Immunities) Act 1995* was amended by Schedule 7 (items 29–37) only of the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*, subsection 2(9) of which provides as follows:

(9) Schedules 7 and 8 (other than items 1 to 6 of Schedule 8) commence immediately after the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.

The *A New Tax System (Goods and Services Tax) Act 1999* came into operation on 1 July 2000.

Endnotes

Endnote 2—Amendment history

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Overseas Missions (Privileges and Immunities) Act 1995*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

| Provision affected | How affected |
|---------------------------|----------------------------------|
| s. 3 | am. No. 177, 1999 |
| S. 9..... | am. No. 177, 1999 |
| Heading to s. 12..... | am. No. 101, 2006 |
| s. 12 | am. No. 101, 2006 |
| s. 12A | am. No. 177, 1999; No. 103, 2013 |

Endnote 3—Uncommenced amendments [none]

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There are no uncommenced amendments.

Endnotes

Endnote 4—Misdescribed amendments [none]

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There are no misdescribed amendments.