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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

CONSULAR PRIVILEGES AND IMMUNITIES AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Foreign Affairs,
the Honourable Alexander Downer MP)

CONSULAR PRIVILEGES AND IMMUNITIES AMENDMENT BILL 2005

GENERAL OUTLINE

This Bill amends the *Consular Privileges and Immunities Act 1972* (the Act) to allow for privileges and/or immunities to be granted to consular officers in Australia which supplement, extend or amplify the privileges and/or immunities currently available under the *Vienna Convention on Consular Relations* (“the Convention”). These privileges and/or immunities would be granted on the basis of an agreement, arrangement or understanding concluded with another country in which reciprocal privileges and/or immunities have been granted to Australian consular officers.

The Act incorporates specific Articles of the Convention into Australian law. The Convention governs the conduct of consular relations between nation States and establishes the privileges and immunities of consular posts and associated persons.

This Bill inserts a new section into the Act which will allow Australia to negotiate with another country more favourable treatment than the Convention would currently provide for Australian consular officers in that country, on the basis that Australia would offer reciprocal treatment to consular officers of that country in Australia. Given the Convention was drafted in 1963, the power to negotiate additional privileges and/or immunities will better protect Australian interests and personnel by establishing privileges and/or immunities for Australian consular officers which reflect the changed overseas operating environment.

FINANCIAL IMPACT STATEMENT

The measures dealt with by the Bill will have little or no financial impact.

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NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. The Bill will commence on the day it receives Royal Assent.

Clause 3: Schedules

3. Clause 3 is a formal provision specifying that the Act specified in the Schedule to the Bill is amended or repealed as set out in the Schedule.

SCHEDULE 1 – Amendment of the *Consular Privileges and Immunities Act 1972*

Item 1 - After Section 10

New Section 10AA Additional Privileges or Immunities granted by agreement, arrangement or understanding

4. Item 1 of the Schedule inserts a new section 10AA into the Act which allows for additional privileges or immunities, or both, to be granted on a reciprocal basis to consular officers of an overseas country.
5. Subsection 10AA(1) sets out the conditions under which additional privileges or immunities, or both, will be granted to consular officers in Australia.
6. The references in subsection 10AA(1)(a) to an “agreement, arrangement or understanding” allow flexibility for Australia to express its commitments to an overseas country. The reference to “agreement” contemplates Australia entering into a formal treaty with an overseas country, which would be binding at international law, and potentially subject to international arbitration. The references to “arrangement or understanding” allow for a bilateral commitment between Australia and an overseas country which will be domestically implemented by Australia and the overseas country, but will not create treaty obligations under international law.
7. Section 3 of the *Consular Privileges and Immunities Act 1972* states that, unless the contrary intention appears, an overseas country “means a country other than Australia or an external Territory”.

8. Subsection 10AA(1)(b) permits Australia to negotiate a reciprocal instrument before or after a determination is made by the Minister under subsection 10AA(2). No privileges or immunities are granted unless both a reciprocal instrument and a Ministerial determination are in place.
9. The definition of “consular officers” for the purposes of subsection 10AA(1)(b) is contained in Article 1 of the Vienna Convention on Consular Relations.
10. Subsection 10AA(1)(c)(ii) allows for Australia to make a commitment which does not precisely replicate a commitment made by an overseas country, but which provides for equivalent privileges or immunities, or both, to be granted to Australian consular officers in the overseas country. This contemplates a situation where an overseas country is not in a position to provide the same privileges or immunities that it seeks in Australia (or vice versa), or where it would serve Australia’s interests to request an equivalent, although not identical, privilege or immunity. This situation may arise where Australia negotiates with an overseas country with a different legal system, or where policy considerations dictate that different privileges or immunities are required.
11. Subsection 10AA(1)(d) requires that the privileges or immunities, or both, granted supplement, extend or amplify those granted by the *Vienna Convention on Consular Relations*.
12. Subsection 10AA(2) permits the Minister to make or revoke a determination, by legislative instrument, that section 10AA applies to an overseas country.