International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 2000

Statutory Rules 2000 No. 283

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the International Organisations (Privileges and Immunities) Act 1963.

Dated 25 October 2000

By His Excellency’s Command

ALEXANDER DOWNER
Minister for Foreign Affairs
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Part 1  Introductory

1 Name of Regulations
These Regulations are the *International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 2000*.

2 Commencement
These Regulations take effect from a day specified in a written determination made by the Minister under subsection 13 (2) of the *International Organisations (Privileges and Immunities) Act 1963* for the purposes of the commencement of these Regulations.

3 Definitions
In these Regulations:

*Act* means the *International Organisations (Privileges and Immunities) Act 1963*.


*member of the family* or *family member*, in relation to a person (the *first person*), means a person who is:

(a) a part of the first person’s household; and

(b) any of the following members of the first person’s family:

   (i) the first person’s spouse;

   (ii) an unmarried child who is under the age of 21 years;

   (iii) an unmarried child who is under the age of 25 years and is undertaking full-time studies at an Australian educational institution;

   (iv) an unmarried child who is incapable of self-support because of a physical or mental disability.
member of the Tribunal includes:

(a) an elected member of the Tribunal; and

(b) an elected member of the Tribunal who has been replaced but is finishing proceedings in accordance with paragraph 3 of article 5 of the Statute; and

(c) a person chosen under article 17 of the Statute to be a member of the Tribunal for a particular case.

official of the Tribunal includes the Registrar of the Tribunal and the other members of the staff of the Registry.

Registrar of the Tribunal includes an official of the Tribunal who is acting as Registrar of the Tribunal.

Statute means the Statute of the International Tribunal for the Law of the Sea set out in Annex VI to the Convention.

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

tax invoice has the meaning given by section 29-70 of the GST Act.

Tribunal means the International Tribunal for the Law of the Sea established by the Statute.

4 Privileges and immunities are subject to quarantine laws etc

(1) Nothing in these Regulations affects the application of a law about:

(a) quarantine; or

(b) importation into, or exportation from, Australia or an external Territory.

(2) However, subregulation (1) does not affect any immunity from civil or criminal process.
5 No immunity from prosecution for motor vehicle and motor traffic offences

Nothing in these Regulations confers immunity on any person from civil or criminal process:

(a) for the recovery of damages for damage, injury or death resulting from an accident involving a motor vehicle owned or driven by the person; or

(b) relating to the commission of an offence by the person under a law of the Commonwealth, a State or a Territory, relating to motor traffic, motor vehicles or the use of a motor vehicle.

6 Limitation on privileges and immunities for Australian citizens and residents

(1) Nothing in these Regulations confers a privilege or immunity on a person who is an Australian citizen or a permanent resident of Australia except:

(a) a privilege or immunity conferred by these Regulations in respect of an exemption from tax on salaries and allowances received from the Tribunal; and

(b) a privilege or immunity conferred by these Regulations in respect of a period in which a member or official of the Tribunal is in Australia being taken not to be a period of residence in Australia for the purposes of any form of taxation the imposition of which depends on residency; and

(c) a privilege or immunity conferred by these Regulations in respect of immunity from suit and other legal process for acts and things done in carrying out official duties.

(2) In this regulation:

law of Australia has the same meaning as in the Foreign States Immunities Act 1985.

permanent resident of Australia means a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or under a law of Australia.
Part 2 Privileges and immunities of the Tribunal

7 Privileges and immunities of the Tribunal
The Tribunal has the privileges and immunities mentioned in this Part.

8 Legal capacity and personality
The Tribunal:
(a) is a body corporate with perpetual succession; and
(b) is capable, in its corporate name:
   (i) of entering into contracts; and
   (ii) of acquiring, holding and disposing of real and personal property; and
   (iii) of suing and being sued.

9 Premises of the Tribunal are inviolable
The premises of, or occupied by, the Tribunal are inviolable.

10 Immunity of the Tribunal from suit and other legal process
   (1) The Tribunal is immune from suit and other legal process.
   (2) The Tribunal may waive its immunity.
   (3) However, a waiver extends to a measure of execution of a judgment only if the waiver is expressed to do so.
   (4) The Tribunal may waive its immunity from a measure of execution of a judgment arising from a suit at the same time as, or after, the Tribunal waives its immunity from suit.
11 **Immunity of property of the Tribunal**

The property of, or in the custody of, the Tribunal is immune from suit and other legal or administrative process.

12 **Archives of the Tribunal are inviolable**

The archives of the Tribunal, and all documents belonging to, or in the custody of, the Tribunal, are inviolable.

13 **Communications**

(1) For telecommunications sent by the Tribunal that contain only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Australia), the Tribunal is entitled to any reduced rates applicable in relation to such telecommunications by the press.

(2) The Tribunal is also entitled to any more favourable treatment in relation to priorities, rates and taxes for official communications and correspondence that is received by any of the following:

(a) a diplomatic mission;

(b) an international organisation to which the Act applies;

(c) an international organisation to which the Act would apply if Australia or a person representing Australia were a member of the organisation.

(3) For its official communications and correspondence, the Tribunal may use:

(a) any appropriate means of communication; and

(b) codes or ciphers.

(4) Official communications and correspondence of the Tribunal are inviolable.

(5) If the Tribunal uses a courier to send or receive correspondence or other things, the Tribunal is entitled to have the courier treated as a diplomatic courier.
(6) If the Tribunal uses a sealed bag to send or receive correspondence or other things, the Tribunal is entitled to have the bag treated as a diplomatic bag.

14 Exemption from direct taxes

(1) The Tribunal, its assets, income and other property, and its operations and transactions, are exempt from direct taxes.

(2) However, nothing in subregulation (1) exempts the Tribunal from charges for public utility services.

15 Exemptions relating to imports and exports

(1) For goods imported or exported by the Tribunal for its official use, and for publications of the Tribunal imported or exported by the Tribunal, the Tribunal is exempt from the following:
   (a) customs duties;
   (b) liability to pay and collect taxes for the importation or exportation;
   (c) prohibitions and restrictions in relation to the importation or exportation.

(2) However, the exemption ceases to apply to imported goods (other than publications of the Tribunal) that are sold, donated or otherwise disposed of in Australia within 2 years after the goods were imported.

16 Exemption from currency restrictions

(1) The Tribunal is exempt from financial controls, regulations and moratoriums in respect of its official activities.

(2) For carrying on its official activities, the Tribunal may:
   (a) hold funds in any kind of currency (including gold); and
   (b) operate accounts in any currency; and
   (c) transfer its funds in any kind of currency (including gold) from Australia to another country, or within Australia; and
   (d) convert any currency held by it into any other currency; and
(e) receive, hold, negotiate, transfer, convert or otherwise deal with bonds or other financial securities.
Part 3 Privileges and immunities of members of the Tribunal

17 Members of the Tribunal engaged on business of the Tribunal

(1) A member of the Tribunal engaged on business of the Tribunal has the following privileges and immunities:

(a) the privileges and immunities mentioned in the Second Schedule to the Act as if the member were a high officer, or former high officer, mentioned in that Schedule;

(b) any period during which the member is engaged on business of the Tribunal in Australia is taken not to be a period of residence in Australia for the purposes of any form of taxation the imposition of which depends on residency.

(2) However, paragraph (1) (b) does not apply in relation to the imposition of tax on a transaction or income of a member if application of the paragraph would result in an amount of tax being imposed that is more than the amount of tax that would be imposed if the paragraph did not apply.

18 Members on a journey

A member of the Tribunal on a journey related to carrying out his or her official duties has the privileges and immunities mentioned in regulation 17.

19 Members holding themselves at the disposal of the Tribunal

A member of the Tribunal residing in Australia for the purpose of holding himself or herself at the disposal of the Tribunal has the privileges and immunities mentioned in regulation 17.
20 Members not engaged on business of the Tribunal

A member of the Tribunal who is not engaged on business of the Tribunal is entitled to the same repatriation facilities in a time of international crisis as are accorded to a diplomatic agent who is not accredited or assigned to Australia.
Part 4  Privileges and immunities of other persons associated with the Tribunal

21  Privileges and immunities of officials of the Tribunal

(1) The Registrar of the Tribunal has, when engaged on the business of the Tribunal, the same privileges and immunities under these Regulations as a member of the Tribunal engaged on business of the Tribunal, including the privileges mentioned in Part 5 of these Regulations.

(2) An official of the Tribunal (other than the Registrar of the Tribunal) has, when engaged on the business of the Tribunal, the following privileges and immunities:
   (a) immunity from personal arrest and detention;
   (b) immunity from seizure of his or her personal baggage;
   (c) the same privileges and immunities in respect of personal baggage as are accorded to a diplomatic agent;
   (d) immunity from suit and other legal process in respect of acts and things done in carrying out his or her official duties;
   (e) exemption from the obligation to perform national service;
   (f) exemption (including exemption of members of the official’s family forming part of his or her household) from the application of laws relating to immigration and registration of aliens;
   (g) exemption from currency and exchange restrictions to the same extent as for an official, of comparable rank, forming part of a diplomatic mission to Australia;
   (h) the same repatriation facilities (including repatriation facilities for members of the official’s family forming part of his or her household) in a time of international crisis as are accorded to a diplomatic agent;
   (i) exemption from taxation on salaries and allowances received from the Tribunal;
(j) any period during which the official is engaged on the business of the Tribunal in Australia is taken not to be a period of residence in Australia for the purposes of any form of taxation the imposition of which depends on residency.

(3) However, paragraph (2) (j) does not apply in relation to the imposition of tax on a transaction or income of an official if application of the paragraph would result in an amount of tax being imposed that is more than the amount of tax that would be imposed if the paragraph did not apply.

(4) However, an official of the Tribunal has the privileges and immunities mentioned in subregulation (2) only if the official is part of a class of officials that the Tribunal tells the Minister, the Australian Ambassador to Germany or the Australian Embassy in Berlin, in writing, is a class to which subregulation (2) is to apply.

22 Privileges and immunities of agents, counsel and advocates

A person who is an agent, counsel or advocate of a party to a case before the Tribunal has, during his or her mission for that party (including journeys related to the mission), the following privileges and immunities:

(a) immunity from personal arrest or detention;
(b) immunity from seizure of his or her personal baggage;
(c) the same privileges and immunities in respect of personal baggage as are accorded to a diplomatic agent;
(d) immunity from suit and other legal process in respect of acts and things done in carrying out his or her official duties;
(e) inviolability of documents and papers;
(f) the right to receive papers and correspondence by courier and in sealed bags;
(g) exemption from the application of laws relating to immigration and registration of aliens;
(h) the same privileges and immunities in respect of personal baggage as for a representative of a foreign government on a temporary official mission on behalf of that government;

(i) exemption from currency and exchange restrictions to the same extent as for a representative of a foreign government on a temporary official mission on behalf of that government;

(j) the same repatriation facilities in a time of international crisis as are accorded to a diplomatic agent.

23 Privileges and immunities of experts appointed under article 289 of the Convention

An expert appointed under article 289 of the Convention has, during the mission for which he or she is appointed (including journeys related to the mission), the following privileges and immunities:

(a) immunity from personal arrest or detention;

(b) immunity from seizure of his or her personal baggage;

(c) the same privileges and immunities in respect of personal baggage as are accorded to a diplomatic agent;

(d) immunity from suit and other legal process in respect of acts and things done in carrying out his or her official duties;

(e) inviolability of documents and papers;

(f) exemption from the application of laws relating to immigration and registration of aliens;

(g) exemption from currency and exchange restrictions to the same extent as for a representative of a foreign government on a temporary official mission on behalf of that government;

(h) the same repatriation facilities in a time of international crisis as are accorded to a diplomatic agent.
24 Privileges and immunities of witnesses, experts and persons performing missions

(1) A person to whom this subregulation applies has, during his or her mission for the Tribunal (including journeys related to the mission), the privileges and immunities mentioned in subregulation (3).

(2) Subregulation (1) applies to a person:
   (a) who is a witness in a case before the Tribunal; or
   (b) who is:
       (i) an expert (other than an expert appointed under article 289 of the Convention) engaged on a mission by order of the Tribunal; or
       (ii) otherwise engaged on a mission by order of the Tribunal.

(3) The privileges and immunities for the person are:
   (a) immunity from personal arrest or detention; and
   (b) immunity from seizure of his or her personal baggage; and
   (c) the same privileges and immunities in respect of personal baggage as are accorded to a diplomatic agent; and
   (d) immunity from suit and other legal process in respect of acts and things done in carrying out his or her official duties; and
   (e) inviolability of documents and papers; and
   (f) exemption from the application of laws relating to immigration and registration of aliens; and
   (g) exemption from currency and exchange restrictions to the same extent as for a representative of a foreign government on a temporary official mission on behalf of that government; and
   (h) the same repatriation facilities in a time of international crisis as for an official of comparable rank forming part of a diplomatic mission to Australia.
Part 5 Indirect tax concession scheme

25 Acquisitions

(1) For paragraph 11C (1) (a) of the Act, the following acquisitions by the Tribunal or a member of the Tribunal engaged on business of the Tribunal are covered by these Regulations:

(a) an acquisition of any of the following, on a single tax invoice for a taxable supply of at least $200 (including indirect tax):
   (i) goods (by purchase or lease);
   (ii) services consisting of the removal of goods;

(b) an acquisition of goods that are freed from duties of excise by paragraph 17 (1) (a);

(c) an acquisition of warehoused goods (within the meaning of the Customs Act 1961), the importation of which is covered by an immunity from taxation (including customs duties) conferred by these Regulations.

(2) However:

(a) an acquisition mentioned in subregulation (1) is covered by these Regulations only if, at the time of the acquisition, it was intended for the official use of the Tribunal, the personal use of a member of the Tribunal, or the personal use of a member of the family of the member of the Tribunal; and

(b) an acquisition of a motor vehicle for the official use of the Tribunal or the personal use of a member of the Tribunal is covered by these Regulations only if:
   (i) within the previous 3 years, the Tribunal or member of the Tribunal has not received:
      (A) a concession under section 11C of the Act for the acquisition of another motor vehicle; or
(B) an exemption from indirect tax under section 11B of the Act on the importation of another motor vehicle; or

(ii) the vehicle was acquired in exceptional circumstances to replace a motor vehicle for which the Tribunal or member of the Tribunal received:

(A) a concession under section 11C of the Act; or

(B) an exemption from indirect tax under section 11B of the Act; and

(c) an acquisition of a motor vehicle for the personal use of a member of the family of a member of the Tribunal is covered by these Regulations only if:

(i) the family member is eligible to hold a driver’s licence that is valid in Australia and, within the previous 3 years, the family member has not received:

(A) a concession under section 11C of the Act for the acquisition of another motor vehicle for the personal use of a family member; or

(B) an exemption from indirect tax under section 11B of the Act on the importation of another motor vehicle for the personal use of a family member; or

(ii) the vehicle was acquired in exceptional circumstances to replace a motor vehicle for which the family member received:

(A) a concession under section 11C of the Act; or

(B) an exemption under section 11B of the Act.

(3) In subparagraphs (2) (b) (ii) and (c) (ii):

**exceptional circumstances**, in relation to the replacement of a motor vehicle, includes the original vehicle being stolen or damaged beyond repair.

*Note*  Section 11C of the Act establishes an indirect tax concession scheme that provides for reimbursement by the Commissioner of Taxation of indirect tax payable for acquisitions covered by these Regulations.
26 Conditions

(1) For paragraph 11C (3) (a) of the Act, the amount mentioned in subsection 11C (1) of the Act is payable only if the following conditions are satisfied:

(a) the person who made the acquisition is subject to an agreement in writing between the person and the Commonwealth to repay to the Commonwealth the amount worked out under subregulation (3) if:

(i) for a payment in relation to an acquisition of a motor vehicle — the person disposes of the motor vehicle (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 3 years after it was acquired; or

(ii) for a payment in relation to an acquisition of goods other than a motor vehicle — the person disposes of the goods (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory within 2 years after they were acquired; or

(iii) for a payment in relation to an acquisition of the right to receive services — the person assigns the services to another person (except to another person entitled to an indirect tax concession under these Regulations or another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory;

(b) if the person has breached a previous agreement under paragraph (a) — the person complies with any written requirements, including a requirement to give security, that the Minister considers necessary to ensure that the person complies with the agreement.

Note The expression ‘person’ includes the Tribunal — see paragraph 8 (a) and the Acts Interpretation Act 1901, paragraph 22 (1) (a).
(2) For subparagraphs (1) (a) (i) and (ii):

(a) a sale of goods to a finance company as part of a sale and lease-back arrangement is not a disposal of the goods; and

(b) a person (the first person) is taken to have disposed of goods to which 1 of those subparagraphs applies within the period mentioned in that subparagraph to a person who is not entitled to an indirect tax concession in relation to similar acquisitions if:

(i) the first person disposes of the goods to a person (the second person) who is entitled to the concession; and

(ii) the second person disposes of the goods to another person; and

(iii) the series of disposals of the goods to other persons continues (if necessary) until the goods are eventually acquired, within the period mentioned in that paragraph, by a person who is not entitled to the concession.

(3) For paragraph (1) (a), the amount to be repaid is:

(a) for an acquisition to which subparagraph (1) (a) (i) or (ii) applies — the proportion of the amount paid under section 11C of the Act in relation to the acquisition that is equal to the proportion of the period mentioned in that subparagraph remaining after the person disposes of the goods; and

(b) for an acquisition to which subparagraph (1) (a) (iii) applies — the amount paid under section 11C of the Act in relation to the acquisition.

(4) However, for an acquisition to which subparagraph (1) (a) (i) or (ii) applies, a person is not required to repay an amount paid under section 11C of the Act in relation to a lease payment that relates to a period before the person disposes of the goods.
(5) The amount mentioned in subsection 11C (1) of the Act is not payable if:
(a) an amount was payable for a similar acquisition; and
(b) the Minister tells the person in writing that, in the Minister's opinion, the person's reasonable needs were met by that acquisition.

27 Claims for payment

(1) A claim for an amount covered by subsection 11C (1) of the Act for an acquisition covered by these Regulations:
(a) must be signed:
   (i) if the expense of the acquisition was incurred by a member of the Tribunal — by that member; or
   (ii) if the expense of the acquisition was incurred by the Tribunal — by the Registrar or Deputy Registrar of the Tribunal; and
(b) must be sent with the tax invoice for the acquisition; and
(c) must be sent:
   (i) for an acquisition of a motor vehicle — to the Department of Foreign Affairs and Trade; or
   (ii) in any other case — to the Australian Taxation Office; and
(d) for an acquisition of a motor vehicle — may be sent at any time after the acquisition; and
(e) for an acquisition of anything other than a motor vehicle — may only be sent:
   (i) with another claim; or
   (ii) at least 3 months after another claim from the Tribunal or member of the Tribunal.

(2) In this regulation:

   Deputy Registrar of the Tribunal includes an official of the Tribunal who is acting as Deputy Registrar of the Tribunal.
Manner of payment

For paragraph 11C (3) (b) of the Act, the amount is to be paid to a single recipient, or an account, nominated by the Tribunal or member of the Tribunal.
Part 6  Waiver and delegation

29  Waiver of privileges and immunities

(1) The Tribunal may waive any privileges or immunities conferred by the Act or these Regulations on the following people:
   (a) a member of the Tribunal;
   (b) the Registrar of the Tribunal;
   (c) experts appointed under article 289 of the Convention;
   (d) witnesses, experts and persons performing missions;
   (e) agents, counsel and advocates, other than those agents, counsel and advocates mentioned in subregulation (2).

(2) A State that is a party to proceedings before the Tribunal may waive any privileges or immunities conferred by the Act or these Regulations on an agent, counsel or advocate representing, or designated by, that State for the proceedings.

(3) The Registrar may, with the approval of the President of the Tribunal, waive any privileges or immunities conferred by the Act or these Regulations on officials of the Tribunal not mentioned in subregulation (1).

30  Delegation

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to an SES employee or an acting SES employee the Minister’s powers under paragraphs 26 (1) (b) and (5) (b) of these Regulations.

(2) A power delegated under subregulation (1), when exercised by the delegate, is taken to have been exercised by the Minister.

(3) A delegation of power under subregulation (1) does not prevent the exercise of the power by the Minister.
(4) In this regulation:

*SES employee* and *acting SES employee* have the same meanings as in the *Public Service Act 1999.*
Part 7  Repeal and saving

31  International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 1998 — repeal

Statutory Rules 1998 No. 41 is repealed.

32  Transitional

(1) If:
(a) a privilege or immunity conferred on a member of the Tribunal under the old regulations was waived under those regulations and the waiver was in force immediately before the commencement of these Regulations; and
(b) the privilege or immunity is conferred on the member by these Regulations;
the waiver mentioned in paragraph (1) (a) continues to have effect for the privilege or immunity conferred under these Regulations.

(2) An acquisition of the kind mentioned in Part 5 that was covered by the old regulations for which a claim for payment has not been made or finally determined before the commencement of these Regulations is taken to be an acquisition covered by these Regulations.

(3) In this regulation:
old regulations means the International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations 1998 as in force immediately before the commencement of these Regulations.

Note
1. Notified in the Commonwealth of Australia Gazette on 2000. 26 October