EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 233

Issued by the Authority of the Minister for Foreign Affairs

International Organisations (Privileges and Immunities) Act 1963

Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations 2008

The Agreement on the Conservation of Albatrosses and Petrels (ACAP) is a multilateral agreement which seeks to conserve albatrosses and petrels by coordinating international activity to mitigate known threats to albatross and petrel populations. Australia became a Party to ACAP in 2001.

The Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations 2008 (the Regulations), established under the International Organisations (Privileges and Immunities) Act 1963 (the Act), will give effect to Australia’s obligations under the Headquarters Agreement between the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels and the Government of Australia (ACAP Headquarters Agreement) signed by Australia on 23 June 2008. The headquarters of the ACAP Secretariat will be permanently based in Hobart, Tasmania.

The Regulations will provide privileges and immunities to the Executive Secretary and other ACAP Secretariat staff as well as their family members, representatives at ACAP meetings and relevant experts, as provided for in the ACAP Headquarters Agreement.

The Regulations accord international organisation status to the ACAP Meeting of the Parties, and as a result, to the Secretariat as a body established by the Meeting of the Parties. The Regulations also provide that the Secretariat will have immunity from suit and other administrative or legal processes and also that the Secretariat will be exempt from all direct taxes in Australia – including income, capital gains, corporations tax and customs and excise duties – and be entitled to a refund of goods and services tax. The Department of the Environment, Water, Heritage and the Arts has committed to meeting the tax and revenue costs associated with the Secretariat.

Under the ACAP Headquarters Agreement, Australia is obliged to treat representatives attending ACAP conferences or meetings with all due respect and to take all appropriate steps to prevent any attack on a representative.

Details of the Regulations are set out in the Attachment.

All relevant Ministers and Commonwealth Government Departments were consulted during the drafting of these Regulations. The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required as “the proposed amendments do not have a direct or significant indirect impact on business and do not restrict competition”.
Details of the Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations 2008

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations 2008.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Definitions

This regulation provides for definitions used throughout the Regulations.

Regulation 4 – Act to apply to Meeting of the Parties

This regulation provides that the Meeting of the Parties to ACAP is an international organisation to which the International Organisations (Privileges and Immunities) Act 1963 (the Act) applies. At present, there are 13 parties to ACAP.

Regulation 5 – Secretariat has legal personality and capacity

This regulation confers legal personality and capacities on the ACAP Secretariat. The headquarters of the ACAP Secretariat will be permanently based in Hobart, Tasmania. In particular, it provides that the ACAP Secretariat is a body corporate with perpetual succession, is capable (in its corporate name) of entering into contracts and of annexing, holding and disposing of real and personal property and of instituting and being a party to legal proceedings.

Regulation 6 – Privileges and immunities of Secretariat

This regulation provides that, subject to some limitations, the ACAP Secretariat has the privileges and immunities specified in the First Schedule to the Act except for item 8 of that Schedule. The ACAP Secretariat is a small Secretariat unlikely to grow beyond 2 to 3 officers in the near future. The general privileges and immunities accorded to the ACAP Secretariat include: immunity from suit and legal processes; exemption from currency and other restrictions; inviolability of property, assets and archives; and exemption from prohibitions or restrictions on the importation or exportation of goods imported or exported for official use.

Regulation 7 – Limitation on immunity from suit etc

This regulation limits the ACAP Secretariat’s immunity from suit and other legal processes. For example, the ACAP Secretariat is not immune from civil proceedings in relation to contracts entered into for the supply of goods or services, or from proceedings with respect to the damages relating to motor vehicle accidents.
Regulation 8 – Limitations on inviolability of premises

This regulation provides that Australian authorities may enter, without the consent of the Executive Secretary, the ACAP Secretariat’s premises in the case of fire or other emergency requiring immediate protective action.

Regulation 9 – Limitation on exemption of property of Secretariat from restrictions and controls

This regulation limits the application of regulation 5 in regard to the Secretariat’s property and assets which are abandoned by the Secretariat for a period exceeding 12 months.

Regulation 10 – Limitation on exemption from taxes etc

This regulation limits the Secretariat’s exemption from taxes, including in respect to national, regional and municipal taxes or payments for specific services for the Secretariat Headquarters. The exemptions from taxation of income will be given on the understanding that no taxation shall be imposed on such income by other Parties. This regulation also limits the exemption from duties and taxes for goods imported into, purchased or manufactured by the Secretariat in, Australia which are donated, sold, lent, or otherwise disposed of in Australia by the Secretariat.

Regulation 11 – Privileges and immunities of Executive Secretary

This regulation provides that the office of the Executive Secretary is a high office. The Executive Secretary has the privileges and immunities listed in Part I of the Second Schedule to the Act. The Executive Secretary of the ACAP Secretariat is entitled to the same broad privileges and immunities that are accorded to diplomatic agents, for example, immunity from jurisdiction and arrest. The Executive Secretary is also entitled to those privileges and immunities accorded to Secretariat staff.

The Executive Secretary has immunity from suit and from other legal process in respect of acts and things done in the capacity of the Executive Secretary, during and subsequent to his or her term as Executive Secretary. This immunity extends to an Executive Secretary who is a citizen or permanent resident of Australia.

Regulation 12 – Privileges and immunities of officers of Secretariat

This regulation provides that, subject to some limitations, the Secretariat staff have the privileges and immunities specified in the Fourth Schedule to the Act. This includes immunity from suit and from other legal process in respect of acts and things done in the capacity of Secretariat staff, during and subsequent to employment with the Secretariat. This immunity extends to staff who are citizens or permanent residents of Australia.

Further privileges and immunities extend to staff who are not Australian citizens and permanent residents of Australia. These include, for example, exemption from taxation on salaries and emoluments, exemption from currency or exchange restrictions to the extent accorded to a diplomatic mission and the right to import furniture and effects free of duties when first taking up a post in Australia (except in the case of alcohol, motor vehicles or tobacco).
Regulation 13 – Privileges and immunities of spouses and children of officers of Secretariat

This regulation provides that privileges and immunities specified in paragraphs 3 and 6 of Part I of the Fourth Schedule of the Act apply to spouses and children of Secretariat staff, unless a spouse or dependent is a citizen or permanent resident of Australia. This includes exemption from the application of laws relating to immigration and the registration of aliens, and provides repatriation facilities in time of international crisis as are accorded to a diplomatic agent.

Regulation 14 – Privileges and immunities of representatives attending conferences or meetings convened by Meeting of the Parties or Secretariat

This regulation provides that, subject to some limitations, representatives attending ACAP conferences or meetings have the privileges and immunities specified in the Third Schedule to the Act. This includes immunity from suit and from other legal process in respect of acts and things done in the capacity of being accredited to or attending ACAP conferences or meetings, and when the representative has ceased to be accredited to or who has attended an ACAP conference or meeting – this immunity does not extend to representatives who are citizens or permanent residents of Australia.

Additional privileges and immunities accorded to representatives to ACAP meetings include exemptions in relation to inspection of personal baggage as are accorded to diplomatic agents and repatriation facilities in time of international crisis as are accorded to diplomatic agents.

The immunities do not extend to a representative found committing, attempting to commit or having just committed a serious offence. Immunity from suit and other legal process does not extend to the recovery of damages resulting from a motor vehicle accident.

Regulation 15 – Privileges and immunities of experts working with Secretariat

This regulation provides that, subject to some limitations, experts working with the Secretariat have the privileges and immunities specified in the Fifth Schedule to the Act. This includes immunity from suit and from other legal process in respect of acts and things done in the capacity of an expert, and when the officer ceases to be an expert. This immunity extends to experts who are citizens or permanent residents of Australia.

Privileges and immunities accorded to experts working with the Secretariat also include, for example, exemption from currency or exchange restrictions to the extent accorded a representative of a foreign government and exemptions in relation to inspection of personal baggage as are accorded to diplomatic agents.

The immunities do not extend to an expert found committing, attempting to commit or having just committed a serious offence. Immunity from suit and other legal process does not extend to the recovery of damages resulting from a motor vehicle accident or offence.

Regulation 16 – Indirect tax concession scheme – acquisitions

This regulation provides for indirect tax concessions for the acquisition of goods intended for the official use of the Secretariat. For example, it covers the acquisition of goods and removal of goods services with a combined value of at least $500 (including indirect tax). The regulation does not apply to the acquisition of alcohol, luxury motor vehicles or tobacco.
Regulation 17 – Indirect tax concession scheme – conditions

This regulation outlines the conditions by which indirect tax concessions apply. Consistent with established Australian practice for indirect tax concessions, a series of conditions requiring repayment of the concession apply if disposal of goods occurs before a specified time has elapsed. The purpose of regulations 16-19 is to ensure that goods do not enter the general market at a price which does not reflect the impact of indirect taxes.

Regulation 18 – Indirect tax concession scheme – claim for payment

This regulation outlines the procedure for claiming a payment under regulation 16, which deals with acquisitions under the indirect tax concession scheme, including that a claim for payment must be signed by, or for, the Executive Secretary of the ACAP Secretariat.

Regulation 19 – Indirect tax concession scheme – manner of payment

This regulation provides that a payment to the ACAP Secretariat under the indirect tax concession scheme is to be paid to a recipient or account nominated by, or for, the Executive Secretary.

Regulation 20 – Waiver of privileges and immunities

This regulation provides that the Meeting of the Parties may waive a privilege or immunity to which the Executive Secretary, Secretariat staff or experts are entitled because of the Act or these Regulations. This regulation also provides that the government of a party to the ACAP Agreement may waive a privilege or immunity to which a representative of that party to an ACAP meeting is entitled.

Regulation 21 – Privileges and immunities subject to quarantine laws etc

This regulation provides that nothing in the Regulations affects the operation of any law of the Commonwealth, a State or a Territory relating to immigration, health, quarantine or public order or restricting the importation into, or exportation from, Australia or that State or Territory of any animals, plants or goods. This regulation does not prejudice any immunity from suit or other legal process conferred by the Regulations.

Regulation 22 – Delegation

This regulation provides that the Minister may delegate his or her powers under paragraphs 17(1)(b) and (5)(b) of these Regulations to the Secretary of the Department, an SES employee, or an acting SES employee. The delegation must be in writing and must comply with any directions of the Minister in exercising powers or functions under the delegation.