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

Select Legislative Instrument 2008 No. 233

I, QUENTIN BRYCE, 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 28 November 2008

QUENTIN BRYCE
Governor-General

By Her Excellency’s Command

JOHN FAULKNER
Special Minister of State for the Minister for Foreign Affairs
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Federal Register of Legislative Instruments F2008L04489
1 **Name of Regulations**

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

2 **Commencement**

These Regulations commence on the day after they are registered.

3 **Definitions**

In these Regulations:


*Executive Secretary* means the Executive Secretary appointed by the Meeting of the Parties as head of the Secretariat.

*expert*: 

(a) means a person who is performing short-term or temporary projects on behalf of the Meeting of the Parties or the Secretariat; and

(b) includes a person who is:

(i) serving on a body established by, or attending a meeting organised by, the Meeting of the Parties; or

(ii) participating in the work of, or performing a mission on behalf of, the Meeting of the Parties or the Secretariat;

whether or not the person receives remuneration from the Meeting of the Parties or the Secretariat; and

(c) does not include a person who is a member of the staff of the Secretariat.

**Meeting of the Parties** means the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels, mentioned in Article VIII of the Agreement.

**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.

**Secretariat** means the body established by the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels, under Article VIII of the Agreement.

**serious offence** means an offence under any law of the Commonwealth, or of a State or Territory, for which, if the act or omission had taken place in the Jervis Bay Territory, a person would be liable, on first conviction, to imprisonment for a period of not less than 5 years.

**spouse** of a person includes a de facto partner of the person, whether of the same sex or of a different sex.

**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.

### 4 Act to apply to Meeting of the Parties

For section 5 of the Act, the Meeting of the Parties is declared to be an international organisation to which the Act applies.
5 **Secretariat has legal personality and capacity**

The Secretariat:

(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 instituting and being a party to legal proceedings.

6 **Privileges and immunities of Secretariat**

Subject to regulations 7, 8, 9 and 10, the Secretariat has the privileges and immunities specified in paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11 and 12 of the First Schedule to the Act.

7 **Limitation on immunity from suit etc**

(1) The immunity from suit and from other legal process conferred on the Secretariat by regulation 6 does not extend to immunity from a suit or other legal process:

(a) for the recovery of damages by a third party for any damage, injury or death resulting from a motor vehicle accident in which a motor vehicle owned by, or operated on behalf of, the Secretariat, to the extent that damages are not recoverable from insurance; or

(b) in relation to:

(i) a contract entered into by the Secretariat for the supply of goods or services; or

(ii) a loan, or other transaction for the provision of finance, by or to the Secretariat; or

(iii) a contract of guarantee or indemnity to which the Secretariat is a party; or

(c) in relation to a counter-claim against the Secretariat by a party to proceedings instituted by the Secretariat; or
(d) under a final order of a court — in relation to the attachment of any amount payable as salary, wages or other remuneration by the Secretariat to:
   (i) a person holding an office in the Secretariat; or
   (ii) an expert assisting the Secretariat; or
(e) for which the Meeting of the Parties expressly waives its immunity; or
(f) for the enforcement of an arbitration award made in any dispute between the Secretariat and the Commonwealth concerning the interpretation or application of the Headquarters Agreement.

(2) The legal process referred to in paragraph (1) (a) includes any judicial or administrative process, when temporarily necessary in connection with the prevention of, and investigation into, accidents involving such motor vehicles.

8 Limitations on inviolability of premises

(1) If, in the event of a fire or other emergency, immediate entry to premises occupied by the Secretariat is necessary:
   (a) to protect life or property; or
   (b) to bring the fire or other emergency under control;

regulation 6 does not operate to affect the application of any law of the Commonwealth, or of a State, Territory or municipal authority, that authorises a person to enter those premises, without the consent of the owner or occupier of the premises, to exercise powers or to perform duties conferred on that person under a relevant law.

(2) Subregulation (1) does not affect an immunity from suit or from other legal process conferred by these Regulations.

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

The exemption conferred by regulation 6 in respect of the property and assets of the Secretariat ceases to apply to any property or assets abandoned by the Secretariat for a period exceeding 12 months.
10 Limitation on exemption from taxes etc

(1) The Secretariat is not exempt under regulation 6 from:
   (a) national, regional or municipal taxes or payments that constitute payment for specific services in respect of premises owned, leased or occupied by the Secretariat; or
   (b) liability to pay taxes on the income of the Secretariat if income of the Secretariat is subjected to taxation under the law of a country other than Australia that is party to the Agreement.

(2) The exemption conferred by regulation 6 on the Secretariat from duties and taxes in respect of:
   (a) goods imported by the Secretariat into Australia; or
   (b) goods purchased or manufactured by the Secretariat in Australia;
   ceases to apply to goods that are donated, sold, lent, or otherwise disposed of in Australia by the Secretariat otherwise than in accordance with conditions agreed upon in advance between the Secretariat and the Commonwealth.

11 Privileges and immunities of Executive Secretary

(1) For subparagraph 6 (1) (b) (i) of the Act, the office of Executive Secretary is a high office in the Secretariat.

(2) Subject to subregulation (4), a person who holds, or is performing the duties of, the office of Executive Secretary has the privileges and immunities specified in:
   (a) regulation 12; and
   (b) Part I of the Second Schedule to the Act.

(3) Subject to subregulation (4), a person who has ceased to hold, or perform the duties of, the office of Executive Secretary has the immunities specified in Part II of the Second Schedule to the Act.

(4) The privileges and immunities conferred on a person by paragraph (2) (b) do not extend to a person who is an Australian citizen or a permanent resident of Australia.
12 Privileges and immunities of staff members of Secretariat

(1) Subject to subregulations (2), (3), (4) and (7), a person who:
(a) is employed in the Secretariat; and
(b) is not an Australian citizen or a permanent resident of Australia;
has the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

(2) The salary and emoluments received from the Secretariat for services performed in Australia for the Secretariat by a person:
(a) to whom subregulation (1) applies; and
(b) who is a resident of Australia, within the meaning of the Income Tax Assessment Act 1936;
are exempt from taxation only if:
(c) the person is not an Australian citizen or a permanent resident of Australia; and
(d) the person came to Australia solely for the purpose of performing duties of the office in the Secretariat.

(3) The immunity specified in paragraph 7 of Part I of the Fourth Schedule of the Act does not apply to the importation of:
(a) alcohol; or
(b) motor vehicles; or
(c) tobacco;
by a person holding an office in the Secretariat.

(4) The immunity specified in paragraph 7 of Part I of the Fourth Schedule of the Act ceases to apply to goods that are donated, sold, lent, or otherwise disposed of in Australia by the Secretariat otherwise than in accordance with conditions agreed upon in advance between the Secretariat and the Commonwealth.

(5) Subject to subregulation (7), a person who has ceased to hold an office in the Secretariat has the immunities specified in Part II of the Fourth Schedule to the Act.
(6) Subject to subregulation (7), a person who:
   (a) holds, or has held, an office in the Secretariat (including the office of Executive Secretary); and
   (b) is an Australian citizen or a permanent resident of Australia;

has the privileges and immunities specified in:
   (c) subregulation (5); and
   (d) paragraph 1 of Part I of the Fourth Schedule of the Act.

(7) The immunities conferred on a person by subregulation (1), (5) or (6) do not extend to immunity from a suit or other legal process:
   (a) for the recovery of damages by a third party for any
       damage, injury or death resulting from a motor vehicle
       accident in which a motor vehicle owned or driven by the
       person was involved, to the extent that damages are not
       recoverable from insurance; or
   (b) with respect to the commission of an offence under a
       provision of a law of the Commonwealth, or of a State or Territory, with respect to motor traffic, motor vehicles or
       the use of a motor vehicle.

13 Privileges and immunities of spouses and children of officers of Secretariat

(1) Subject to subregulation (2), a person who is the spouse or the dependant child of an officer of the Secretariat has the
privileges and immunities specified in paragraphs 3 and 6 of Part I of the Fourth Schedule to the Act.

(2) The privileges and immunities conferred by subregulation (1) do not apply if:
   (a) a spouse or dependant child is a citizen of Australia or a
       permanent resident of Australia; or
   (b) a child:
       (i) attains the age of 21 years; or
       (ii) ceases to be a dependant of the person.
14 Privileges and immunities of representatives attending conferences or meetings convened by Meeting of the Parties or Secretariat

(1) Subject to subregulations (3), (4) and (5), a person who is accredited to, or attends, as a representative of a country other than Australia, a conference or meeting convened by the Meeting of the Parties or the Secretariat has:

(a) the privileges and immunities specified in Part I of the Third Schedule to the Act;
(b) the same exemptions in relation to inspection of personal baggage as are accorded to diplomatic agents; and
(c) the same exemptions from income tax as apply, under Australian law, to an envoy; and
(d) similar repatriation facilities, for the person, the person’s spouse and the person’s family members, in a time of international crisis as are accorded to a diplomatic agent.

(2) Subject to subregulation (5), a person who has ceased to be accredited to, or who has attended, a conference or meeting convened by the Secretariat, as a representative of a country other than Australia, has the immunities specified in Part II of the Third Schedule to the Act.

(3) The immunities conferred on a person by subregulation (1) do not extend to immunity from personal arrest and detention if the person is found committing or attempting to commit, or has just committed, a serious offence.

(4) The immunities conferred on a person by subregulation (1) or (2) do not extend to immunity from a suit or other legal process for the recovery of damages for any damage, injury or death resulting from an accident in which a motor vehicle owned or driven by the person was involved.

(5) The immunities conferred on a person by subregulation (1) or (2) do not apply to a person who is an Australian citizen or a permanent resident of Australia.
15 Privileges and immunities of experts working with Secretariat

(1) Subject to subregulations (4) and (5), an expert, not being a person to whom subregulation 11 (2) or 12 (1) applies, has the privileges and immunities specified in paragraphs 2 and 3 of Part I of the Fifth Schedule to the Act.

(2) Subject to subregulation (4), an expert who has served on a committee, or participated in the work, of the Secretariat or performed a mission on behalf of the Secretariat has the immunities specified in Part II of the Fifth Schedule to the Act.

(3) An expert who is not:
   (a) an Australian citizen; or
   (b) a permanent resident of Australia;
has, in addition to the privileges and immunities referred to in subregulation (1), the privileges and immunities specified in paragraphs 1, 5 and 6 of Part I of the Fifth Schedule to the Act.

(4) The immunities conferred on an expert by subregulation (1) or (2) do not extend to immunity from a suit or other legal process:
   (a) for the recovery of damages for any damage, injury or death resulting from an accident in which a motor vehicle owned or driven by the person was involved; or
   (b) with respect to the commission of an offence under a provision of a law of the Commonwealth, or of a State or Territory, relating to motor traffic, motor vehicles or the use of a motor vehicle.

(5) The immunities conferred on an expert by subregulation (3) do not extend to immunity from personal arrest and detention if that person is found committing or attempting to commit, or has just committed, a serious offence.

16 Indirect tax concession scheme — acquisitions

(1) For paragraph 11C (1) (a) of the Act, an acquisition by the Secretariat is covered by these Regulations.
(2) However, an acquisition by the Secretariat is covered by these Regulations only if, at the time of the acquisition, it was intended for the official use of the Secretariat.

(3) Subject to subregulation (4), for paragraph 11C (1) (a) of the Act, the following acquisitions by or on behalf of the Secretariat are covered by these Regulations:

(a) an acquisition of any of the following, with a combined value of at least $500 (including indirect tax):
   (i) goods (by purchase or lease);
   (ii) services for the removal of goods;

(b) an acquisition of goods that, under regulation 6, are not subject to duties or taxes;

(c) an acquisition of warehoused goods (within the meaning of the *Customs Act 1901*), the importation of which is covered by an immunity from taxation (including customs duties) conferred by these Regulations.

(4) This regulation does not apply to the acquisition by, or on behalf of, the Secretariat of:

(a) alcohol; or

(b) luxury motor vehicles; or

(c) tobacco.
17 Indirect tax concession scheme — 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 Secretariat and the Commonwealth to repay to the Commonwealth the amount worked out under subregulation (2), if:

(i) for a payment in relation to an acquisition of a motor vehicle — the person disposes of the motor vehicle 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 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 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 within 2 years after they were acquired; or

(iii) for a payment in relation to an acquisition of services or any other acquisition — 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.

(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) either:

(A) that other person is not entitled to the concession; or

(B) the series of disposals of the goods to other persons continues 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 his or her opinion, the person’s reasonable needs were met by that acquisition.

(6) In this regulation:

*person* includes the Secretariat.

**18 Indirect tax concession scheme — claim for payment**

A claim for payment under regulation 16:

(a) must be signed by, or for, the Executive Secretary; 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 Protocol Branch of 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 or an acquisition of real property by lease — may be sent at any time after the acquisition; and

(e) for an acquisition that is subject to an arrangement between the Secretariat and the Commonwealth for reimbursement of indirect tax, except an acquisition of real property by lease — may only be sent:

(i) in accordance with the arrangement; or

(ii) if the arrangement does not specify a time when a claim may be sent:

(A) with another claim; or

(B) at least 3 months after another claim from the Secretariat is sent; and

(f) for an acquisition that is not mentioned in paragraph (d) or (e) — may only be sent:

(i) with another claim; or
Regulation 19

(ii) at least 3 months after another claim from the Secretariat.

Note Paragraphs (e) and (f) are intended to limit the number of claims from the Secretariat to one in each quarter, to minimise delays in the processing of claims.

19 Indirect tax concession scheme — manner of payment

For paragraph 11C (3) (b) of the Act, the amount is to be paid to a single recipient, or to an account, nominated by, or for, the Executive Secretary.

20 Waiver of privileges and immunities

(1) The Meeting of the Parties may waive any privilege or immunity conferred by the Act or these Regulations on:

(a) the Secretariat; or

(b) a person who holds, or has ceased to hold, the office of Executive Secretary; or

(c) a person who is, or was, a member of the staff of the Secretariat; or

(d) a person who is, or was, an expert, as defined in regulation 3.

(2) If a person:

(a) is accredited to, or is attending, a conference or meeting convened by the Meeting of the Parties or the Secretariat as a representative of a party to the Agreement; or

(b) has been accredited to, or has attended, a conference or meeting as a representative of the party;

the government of the party may waive any privileges or immunities to which the person is entitled under the Act or these Regulations.
21 Privileges and immunities subject to quarantine laws etc

(1) Subject to subregulation (2), nothing in these Regulations affects the application of any law of the Commonwealth, or of a State or Territory, relating to:
(a) quarantine; or
(b) the prohibition or restriction of imports into, or exports from, Australia or an external Territory of any animals, plants or goods; or
(c) public order.

(2) Subregulation (1) does not prejudice the immunity from suit or from other legal processes conferred by these Regulations.

22 Delegation

(1) The Minister may delegate the Minister’s powers under paragraphs 17 (1) (b) and (5) (b) to:
(a) the Secretary of the Department; or
(b) an SES employee, or acting SES employee, in the Department.

(2) The delegation must be in writing.

(3) The delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.

Note