

EXPLANATORY STATEMENT

Select Legislative Instrument No. 237, 2013

Subject - *International Organisations (Privileges and Immunities) Act 1963*

International Organisations (Privileges and Immunities) (International Committee of the Red Cross) Regulation 2013

The *International Organisations (Privileges and Immunities) Amendment Act 2013* (the Amendment Act) amended the *International Organisations (Privileges and Immunities) Act 1963* (the Act) to provide a legislative basis for the enactment of Regulations conferring privileges and immunities on the International Committee of the Red Cross (ICRC) and the International Criminal Court.

Section 13(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 9D(1) of the Amendment Act provides that regulations may confer upon the ICRC and persons referred to in the *Arrangement between the Government of Australia and the International Committee of the Red Cross on a Regional Headquarters in Australia*, done at Canberra on 24 November 2005 (the ICRC Arrangement) such privileges and immunities as are required to give effect to that Arrangement.

Section 9D(2) of the Amendment Act provides that regulations may confer upon the ICRC in Australia legal status and such legal capacities as are necessary for the exercise of its powers and the performance of its functions.

The effect of the Regulation is to confer such privileges and immunities on the ICRC as are required to give effect to the ICRC Arrangement and to confer upon the ICRC in Australia legal status and such legal capacities as are necessary for the exercise of its powers and the performance of its functions.

The Regulation provides that:

- the ICRC's premises, archives and documents are inviolable;
- the ICRC and its property and assets have immunity from any kind of legal process, such as actions for breach of contract, other than certain specified suits or legal processes;
- the property and assets of the ICRC have immunity from search, seizure, requisition, confiscation, expropriation and any other form of interference;
- the ICRC is exempt from customs duties and indirect tax on imports and exports of certain articles, such as ICRC publications and audio-visual materials and articles intended for ICRC assistance programmes within Australia or another country;
- the ICRC is entitled to refund of indirect tax paid in relation to official mail and telecommunications services under specified conditions, including that the claim for payment is in the approved form;

- the ICRC has certain privileges and immunities with respect to its official communications and correspondence, including that the confidentiality of official communications and correspondence must be respected and official communications and correspondence must not be censored;
- delegates of the ICRC in Australia and representatives of the ICRC on temporary mission in Australia have immunity from suit and other legal process (including being called as a witness), certain repatriation facilities in a time of international crisis and certain privileges in relation to exchange facilities;
- delegates of the ICRC in Australia, representatives of the ICRC on temporary mission in Australia, and members of their families, have immunity from any national service obligations if they are not Australian citizens or permanent residents of Australia and have certain entitlements to deferment of national service if they are Australian citizens or permanent residents of Australia;
- delegates of the ICRC in Australia have certain rights to import and export personal effects duty free and, unless an Australian citizen or permanent resident of Australia employed by the ICRC in Australia, immunity from taxation on salaries, fees and allowances received from the ICRC;
- the privileges and immunities conferred in the Regulation are conferred in the interest of the ICRC, and not for the personal benefit of individuals, and may be waived by the ICRC;
- the ICRC must cooperate in the prevention of abuse of the privileges and immunities mentioned in the Regulation, respect Australian law, inform Australian authorities of the details of its personnel working in Australia and their arrivals and departures, and ensure its delegates and representatives in Australia hold appropriate travel documentation;
- the confidentiality of ICRC reports, correspondence and other communications is to be respected; and
- the ICRC has juridical personality and such legal capacities as are necessary for the exercise of its powers and performance of its functions.

The Act specifies no conditions that needed to be satisfied before the power to make the Regulation could be exercised.

The Regulation commenced on the day after registration and is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Authority: Section 13(1) of the
*International Organisations (Privileges
 and Immunities) Act 1963*