



International Organisations (Privileges and Immunities—Organisation for the Prohibition of Chemical Weapons) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 08 December 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Julie Bishop
Minister for Foreign Affairs

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Part 1—Preliminary

1 Name

This is the *International Organisations (Privileges and Immunities—Organisation for the Prohibition of Chemical Weapons) Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	13 December 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *International Organisations (Privileges and Immunities) Act 1963*.

4 Definitions

In this instrument:

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

high office means the following offices in the Organisation:

- (a) Director-General;
- (b) Deputy Director-General.

Organisation means the Organisation for the Prohibition of Chemical Weapons.

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.

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Part 2—Privileges and immunities of the Organisation for the Prohibition of Chemical Weapons and other persons

5 Act applies to the Organisation

The Organisation is an international organisation to which the Act applies.

6 Organisation to have juridical personality and legal capacities

The Organisation:

- (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.

7 Privileges and immunities of the Organisation

- (1) The Organisation has the privileges and immunities specified in the First Schedule to the Act, except item 8.
- (2) The Organisation is not exempt from any Commonwealth, State, Territory or municipal dues and taxes that constitute payment for specific services in respect of premises owned, leased or occupied by the Organisation.
- (3) If goods (other than publications of the Organisation) are imported, manufactured or purchased by the Organisation for sale by it, subsection (1) does not operate to prevent sales tax being payable by the Organisation or by any other person on the sale value of the goods.
- (4) The Organisation's privileges in relation to indirect tax are limited to:
 - (a) the exemption conferred by section 11B of the Act; and
 - (b) concessions under section 11C of the Act in relation to acquisitions mentioned in subsection 14(1) of this instrument.

8 Privileges and immunities of high officers of the Organisation

Privileges and immunities of high officers

- (1) A person who holds, or is performing the duties of, a high office in the Organisation has the privileges and immunities specified in Part I of the Second Schedule to the Act.

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Limitations relating to Australian citizens and permanent residents

- (2) Despite subsection (1), an Australian citizen or a permanent resident of Australia who holds, or is performing the duties of, a high office in the Organisation only has immunity from suit and other legal process in respect of acts and things done in his or her capacity as a high officer.

Former high officers

- (3) A person who has ceased to hold, or perform the duties of, a high office in the Organisation has the privileges and immunities specified in Part II of the Second Schedule to the Act.

9 Privileges and immunities of officers (other than high officers) of the Organisation

Privileges and immunities of other officers

- (1) A person who holds an office in the Organisation other than a high office has the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

Limitations relating to certain persons

- (2) Despite subsection (1), an Australian citizen or a permanent resident of Australia who holds an office in the Organisation other than a high office only has the privileges and immunities specified in item 1 of Part I of the Fourth Schedule to the Act.
- (3) Despite subsection (1), the salary and emoluments received from the Organisation by a person:
 - (a) on whom privileges and immunities are conferred by subsection (1); and
 - (b) who is not an Australian citizen or permanent resident of Australia but is otherwise an Australian resident within the meaning of the *Income Tax Assessment Act 1997*;

are not, to the extent to which they are for services rendered in Australia, exempt from taxation unless the person came to Australia solely for the purpose of performing duties of the office in the Organisation held by the person.

Former officers

- (4) A person who has ceased to hold an office in the Organisation other than a high office has the immunities specified in Part II of the Fourth Schedule to the Act.

Section does not apply to inspectors

- (5) This section does not apply in relation to inspectors (within the meaning of the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, as affected by any amendment that has come into force for Australia).

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- Note 1: The Convention is in Australian Treaty Series 1997 No. 3 ([1997] ATS 3) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- Note 2: Privileges and immunities are conferred on inspectors by the *Chemical Weapons (Prohibition) Regulations 1997*.

10 Privileges and immunities of representatives to the Organisation

Privileges and immunities of representatives to the Organisation

- (1) A person who is accredited to, or is in attendance at an international conference convened by, the Organisation as a representative of a country (other than Australia) has, while exercising his or her functions as such a representative, the privileges and immunities specified in Part I of the Third Schedule to the Act.

Former representatives to the Organisation

- (2) A person who has ceased to be accredited to, or has attended an international conference convened by, the Organisation as a representative of a country (other than Australia) has the immunities specified in Part II of the Third Schedule to the Act.

11 Privileges and immunities of persons serving on committees etc.

Privileges and immunities of persons serving on committees etc.

- (1) A person who is serving on a committee, or is participating in the work, of the Organisation or is performing, whether alone or jointly with other persons, a mission on behalf of the Organisation has the privileges and immunities specified in items 1, 2, 3, 4, 5 and 6 of Part I of the Fifth Schedule to the Act.

Limitations relating to Australian citizens and permanent residents

- (2) Despite subsection (1), an Australian citizen or a permanent resident of Australia who is serving, or is participating in the work, of the Organisation or is performing, whether alone or jointly with other persons, a mission on behalf of the Organisation only has the privileges and immunities specified in item 2 of Part I of the Fifth Schedule to the Act.

Persons who have served on committees etc.

- (3) A person who has served on a committee, or participated in the work, of the Organisation or has performed a mission on behalf of the Organisation has the immunities specified in Part II of the Fifth Schedule to the Act.

12 General exception to privileges and immunities—motor vehicles

Nothing in this instrument 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

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- (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.

13 General exception to privileges and immunities—property or assets

The privileges and immunities conferred by subsection 7(1) in relation to the property and assets of the Organisation cease to apply to any such property or assets:

- (a) if that property has, or those assets have, been abandoned by the Organisation for a period exceeding 12 months; or
- (b) in an emergency in which there is a risk of personal injury, death, property damage or harm to the environment.

Part 3—Indirect tax concession scheme

14 Indirect tax concession scheme—acquisitions

- (1) For paragraph 11C(1)(a) of the Act, the following acquisitions by the Organisation are covered by this instrument:
 - (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) mail services;
 - (iii) telecommunications services;
 - (iv) electricity or gas services;
 - (v) protection of premises services;
 - (vi) removal of goods services;
 - (vii) freight and cartage other than removal of goods;
 - (b) an acquisition of goods that are freed from duties of excise by section 7 of this instrument;
 - (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 this instrument;
 - (d) an acquisition of any of the following, if the acquisition is subject to an arrangement between the Organisation and the Commonwealth for reimbursement of indirect tax:
 - (i) construction or renovation services;
 - (ii) real property;
 - (iii) any other thing.
- (2) However, an acquisition by the Organisation is covered by this instrument only if, at the time of the acquisition, it was intended for the official use of the Organisation.

15 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 Organisation has entered into a written agreement with the Commonwealth to repay to the Commonwealth the amount worked out under subsection (3) of this section if:
 - (i) for a payment in relation to an acquisition of a motor vehicle—the Organisation disposes of the motor vehicle (except to a person entitled to an indirect tax concession under this instrument 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 Organisation disposes of the goods (except to a person entitled to an indirect tax concession under this instrument or another

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- 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—the Organisation assigns the services to another person (except to a person entitled to an indirect tax concession under another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory; or
 - (iv) for a payment in relation to any other acquisition—the Organisation assigns the thing acquired to another person (except to a person entitled to an indirect tax concession under another law of the Commonwealth in relation to similar acquisitions) in Australia or an external Territory;
- (b) if the Organisation has breached a previous agreement under paragraph (a)—the Organisation complies with any written requirements, including a requirement to give security, that the Minister considers necessary to ensure that the Organisation 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) the Organisation is taken to have disposed of goods to which one 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 Organisation disposes of the goods to a person who is entitled to the concession; and
 - (ii) the 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 Organisation disposes of the goods; and
 - (b) for an acquisition to which subparagraph (1)(a)(iii) or (iv) 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 Organisation 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
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- (b) the Minister tells the Organisation in writing that, in his or her opinion, the Organisation's reasonable needs were met by that acquisition.

16 Indirect tax concession scheme—claims for payment

A claim for payment under section 14:

- (a) must be signed by, or for, the Director-General of the Organisation; 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 of a kind mentioned in paragraph 14(1)(d), other than an acquisition of real property by lease—may only be sent as specified in the arrangement mentioned in that paragraph or, if the arrangement does not so specify:
 - (i) with another claim; or
 - (ii) at least 3 months after another claim from the Organisation is sent; and
- (f) for an acquisition that is not mentioned in paragraph (d) or (e) of this section—may only be sent:
 - (i) with another claim; or
 - (ii) at least 3 months after another claim from the Organisation is sent.

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

17 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 an account, nominated by, or on behalf of, the Director-General of the Organisation.

Part 4—Other matters

18 Waiver of privileges and immunities

- (1) The Organisation may waive any privileges and immunities to which:
 - (a) the Organisation; or
 - (b) a person who holds or performs the duties of an office (including a high office) in the Organisation, or who has ceased to hold such an office; or
 - (c) a person who is serving on a committee or participating in the work, or has served on a committee or participated in the work, of the Organisation or is performing or has performed, whether alone or jointly with other persons, a mission on behalf of the Organisation;is entitled by virtue of the Act or this instrument.
- (2) The government of a country may waive any privileges and immunities to which a person who is, or has been, accredited to, or is or was in attendance at an international conference convened by, the Organisation as a representative of that country is entitled to by virtue of the Act or this instrument.

19 Delegation

- (1) The Minister may, by writing, delegate his or her powers under paragraph 15(1)(b) or (5)(b) to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) The delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.