

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Foreign Affairs

International Organisations (Privileges and Immunities) Act 1963

International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022

The *International Organisations (Privileges and Immunities) Act 1963* (the Act) provides for the privileges and immunities of certain international organisations and of persons connected therewith. The Act also makes provision for the conferral of privileges and immunities for the purpose of certain international conferences.

Section 13 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all 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 5 of the Act provides that regulations may declare an organisation to be an international organisation to which the Act applies.

Section 6 of the Act provides the regulations may confer upon an international organisation juridical personality and may confer privileges and immunities on specified categories of persons.

The purpose of the Regulations is to confer privileges and immunities on the Conference of the Parties of the United Nations Framework Convention on Climate Change (COP) and certain participants attending international conferences convened by the COP.

Australia is scheduled to host the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat and Standing Committee on Finance (SCF) Forum on Financing Nature Based Solutions from 26 to 28 September 2022, and a formal SCF meeting from 30 September to 1 October 2022 in Cairns (collectively the Forum).

The SCF is a technical finance expert body under the UNFCCC consisting of twenty members. Australia is currently a member of the SCF and co-facilitator of the Forum with Egypt.

Hosting these meetings provides an opportunity to highlight Australia's increased climate ambition, commitment to hosting and supporting UNFCCC events, and aligns with the Government's broader multilateral engagement agenda.

The Regulations will declare the COP to be an international organisation to which the Act applies. This will extend to the Secretariat and SFC as they are taken to be an organ of, and committee established by, the COP respectively, in accordance with the definition of 'international organisation to which this Act applies' under s 3(1)(a) and (c) of the Act.

The Regulations will confer juridical personality and legal capacities on the COP and confer limited privileges and immunities on the organisation; its organs, other bodies, committees and sub-committees; its representatives and officers; as well as attendees at an international conference convened by the COP, including the Forum and future COP meetings. .

Details of the *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022* are set out in the Attachment.

In accordance with section 17 of the *Legislation Act 2003*, all relevant Commonwealth Government Departments were consulted in the preparation of the Regulations. No public consultation was undertaken in relation to the Regulations.

The Office of Best Practice Regulation advised (reference number OBPR22-02912) that a Regulatory Impact Statement is not required as the Regulations are unlikely to have a more than minor regulatory impact.

The Regulations have been assessed to be compatible with human rights for the purposes of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility is set out below.

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

Details of the *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022*

Section 1 – Name

This section provides that the title of the Regulations is the *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022*

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the Regulations are made under the *International Organisations (Privileges and Immunities) Act 1963*.

Section 4 – Definitions

This section provides that the term ‘Act’ means the *International Organisations (Privileges and Immunities) Act 1963*.

This section also provides that the term ‘Conference of the Parties’ means the Conference of the Parties to the United Nations Framework Convention on Climate Change.

Section 5 – Act applies to the Conference of the Parties

This section provides that Conference of the Parties is declared to be an international organisation to which the Act applies for the purposes of section 5(1) of the Act.

Section 6 – Conference of the Parties to have juridical personality and legal capacities

This section provides that the Conference of the Parties is conferred juridical personality as a body corporate with perpetual succession in Australia. This enables the organisation to enter into contracts, acquire, hold and dispose of real and personal property and institute and be a party to legal proceedings in Australia.

Section 7 – Privileges and immunities of the Conference of the Parties

This section entitles the Conference of the Parties to the privileges and immunities outlined in section 6(1)(a)(ii) and item 2 of the First Schedule of the Act, which is inviolability of the premises of, or occupied by the Conference of the Parties.

Section 8 – Privileges and immunities of representatives

This section entitles representatives of a country other than Australia or another international or overseas organisation, who attend a conference convened by the Conference of the Parties, to the privileges and immunities outlined in section 6(1)(c)(i) and Part 1 of the Third Schedule of the Act. Former representatives have continued immunity from suit and other legal process in respect of acts and things done in their capacity as such a representative, in accordance with Part II of the Third Schedule of the Act.

Section 9 – Privileges and immunities of officers

This section entitles Officers in the Conference of the Parties who attend an international conference convened by the COP to the privileges and immunities outlined in section 6(1)(d)(i) and Part I of the Fourth Schedule of the Act. Former Officers have continued immunity from suit and other legal process in respect of acts and things done in their capacity as such an officer, in accordance with Part II of the Fourth Schedule of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) and 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022

Overview

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022* (the Regulations) is an instrument made under the *International Organisations (Privileges and Immunities) Act 1963* (Cth) (the Act).

The purpose of the Regulations is to confer privileges and immunities on the Conference of the Parties of the United Nations Framework Convention on Climate Change (COP) and certain participants attending international conferences convened by the COP. Australia is scheduled to host the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat and Standing Committee on Finance (SCF) Forum on Financing Nature Based Solutions from 26 to 28 September 2022, and a formal SCF meeting from 30 September to 1 October 2022 in Cairns (collectively the Forum).

The Regulations declare the COP to be an international organisation to which the Act applies under section 5. The Regulations will confer juridical personality and legal capacities on the COP and confer limited privileges and immunities on the organisation; its representatives and officers; as well as attendees at an international conference convened by the COP. The privileges and immunities include immunity from suit and other legal process in respect of acts and things done in their capacity as a representative of their organisation.

The privileges and immunities conferred by the Regulations are necessary to enable the effective conduct of the Forum in Australia and ensure the independence of participants in attendance. The privileges and immunities are conferred in the interest of the organisations and not for the personal benefit of individuals.

The organisations may waive any privileges or immunities to which such persons are entitled.

Human rights implications

This legislative instrument engages the following rights:

- The right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR).

This Article provides that any person “whose rights or freedoms ... are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” Article 2(3)(c) requires State Parties to the ICCPR to ensure that the competent authorities enforce such remedies when granted.

The Regulations confer privileges and immunities outlined in section 6(1)(c) and the Third Schedule of the Act, on certain participants attending the Forum. In addition, the Regulations confer the privileges and immunities contained in section 6(1)(d) and the Fourth Schedule of the Act on officers of the COP attending the Forum. Such immunity from Australia’s jurisdiction could limit the right to an effective remedy for breaches of human rights.

The Regulations are a permissible limitation on the right to an effective remedy because:

- The instances in which the Regulations would have the effect of limiting the right to an effective remedy are anticipated to be few given the limited duration of the Forum and future COP meetings.
- The privileges and immunities are those that are necessary to ensure the effective conduct of the Forum in Australia. They are consistent with those provided to ‘international organisations’ and ‘international conferences’ declared under the Act. Under the Act, privileges and immunities are conferred in interest of the organisation and not for the personal benefit of individuals.
- These provisions are proportionate to the legislative objective. The need to grant privileges and immunities to the personnel of international organisations for the performance of the official functions of the organisations in Australia reflects established international practice. Privileges and immunities are conferred reciprocally between countries and to international organisations to ensure that international representatives are able to: perform their work independently; report freely; and to fulfil their official duties. The privileges and immunities conferred are not only essential in allowing an organisation’s representatives to perform their functions, but also as part of a wider and reciprocal legal framework that protects Australian representatives overseas to perform their duties without fear of local pressures, harassment, intimidation, attack and arbitrary detention.

Conclusion

The Legislative Instrument will facilitate Australia’s hosting of the Forum and future COP meetings which presents an opportunity to highlight Australia's increased climate ambition, commitment to hosting and supporting UNFCCC events, and aligns with the Government's broader multilateral engagement agenda. The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to what is necessary in order to allow the privileged participants to perform their functions for the purpose of the international conference in Australia.