**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) Amendment Regulations 2023*

The *International Organisations (Privileges and Immunities) Act 1963* (the Act) provides for the privileges and immunities of certain international organisations and connected persons. 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 *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022* were made pursuant to section 6 of the Act for the purpose of conferring 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 2023 Local Communities and Indigenous Peoples Platform (LCIPP) Pacific Regional Gathering (the Gathering) convened by the COP from 15-21 October 2023.

Under the United Nations Framework Convention on Climate Change (UNFCCC), the LCIPP has a series of mandated activities including regional gatherings. Regional gatherings focus on identifying and addressing the impacts of climate change and bringing together strategies and techniques to reduce greenhouse gas emissions and build climate resilience, in a manner that respects and promotes human rights, consistently with rights-based international safeguards and indigenous peoples’ cultural protocols. The participation of Indigenous peoples and Indigenous knowledge holders are fundamental to regional gatherings.

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 purpose of the *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Amendment Regulations 2023* (Regulations) is to amend the *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Regulations 2022* to enable privileges and immunities to be granted to experts working with the COP who are invited to attend international conferences convened by the COP due to their relevant expertise and knowledge.

The amendment would enable Australia to accord limited privileges and immunities to experts who are invited to attend the Gathering and future international conferences convened by the COP. The amendment ensures that all necessary participants can freely partake in COP functions.

Details of the *International Organisations (Privileges and Immunities) (Conference of the Parties to the United Nations Framework Convention on Climate Change) Amendment Regulations 2023* 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 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) Amendment Regulations 2023***

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) Amendment Regulations 2023.*

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 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

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

**Item [1] - Regulation 4**

This item inserts the definition of ‘***expert***’ in regulation 4.

The definition of ‘***expert***’ means a person who is performing short-term or temporary projects on behalf of the Conference of the Parties. Certain privileges and immunities are conferred on experts as described in new regulation 10.

**Item [2] - Regulation 10**

This item inserts a new regulation 10 which provides that, subject to some limitations, experts who attend an international conference convened by the conference of the parties have the privileges and immunities outlined in section 6(1)(e)(i) and paragraph 2 of Part I of the Fifth Schedule to the Act. Former experts have continued immunity from suit and other legal process in respect of acts and things done in their capacity as such an expert, in accordance with Part II of the Fifth Schedule to 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) Amendment Regulations 2023*

**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 Convention on Climate Change) Amendment Regulations 2023* (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 experts working with the Conference of the Parties of the United Nations Framework Convention on Climate Change (COP) who are invited to attend international conferences convened by the COP.

The Regulations will confer immunity from suit and other legal process in respect of acts and things done in their capacity as an expert working with the COP. The privileges and immunities conferred by the Regulations are necessary to enable the effective conduct of the COP in Australia and ensure the independence of all participants in attendance. The privileges and immunities are conferred in the interest of the organisation and not for the personal benefit of the individuals.

The immunity conferred is subject to a number of limitations. The immunity does not extend to Australian citizens and permanent residents. It also does not extend to motor vehicle offences or serious offences, which is defined as an offence where a person would be liable to imprisonment for a period of not less than 5 years.

The COP 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)(e)(i) and paragraph 2 of Part I of the Fifth Schedule of the Act, on experts participating in the work of the COP. 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 occurrence and duration of future COP related meetings.
* The specific immunity conferred is limited to acts and things done in their capacity as an expert and does not extend to serious offences.
* The privileges and immunities are those that are necessary to ensure the effective conduct of the COP 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 LCIPP 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.