

Diplomatic Privileges and Immunities Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill makes certain amendments to the Diplomatic Privileges and Immunities Act 1968 that are needed to implement the Agreement on the Privileges and Immunities of the International Criminal Court (the **Agreement**). New Zealand signed the Agreement in October 2002 and the passing of this Bill means New Zealand will be able to ratify the Agreement.

New Zealand is party to the Rome Statute of the International Criminal Court (the **Rome Statute**). Under the Rome Statute, a permanent court has been established in The Hague with jurisdiction over genocide, crimes against humanity, and war crimes. Over the last few years, the Preparatory Commission for the Establishment of the International Criminal Court has been working on various subsidiary documents, including the Agreement. Although the Agreement, which was adopted in September 2002, gives effect to obligations in the Rome Statute, it is a separate instrument and, therefore, requires treaty action in its own right.

The Agreement sets out in detail the privileges and immunities that the International Criminal Court (the **ICC**), its Judges, and others associated with the court enjoy while in the territory of a State Party on ICC business. It also covers persons attending meetings of the Assembly of States Parties to the Rome Statute (the **Assembly**) or its subsidiary organs. The privileges and immunities are broadly similar to those given in other contexts, for example, to diplomats. The Agreement makes it clear that the privileges and immunities are

given in the interests of the ICC, not for the personal benefit of the individuals concerned, and may be waived.

The International Crimes and International Criminal Court Act 2000, which implemented the Rome Statute, also amended the Diplomatic Privileges and Immunities Act 1968 (the **principal Act**). However, to give full effect to the Agreement, which has been negotiated since that Act was passed, a further amendment to the principal Act is needed. This amendment will enable Orders in Council to be made that are similar to those already in existence for various bodies, including the International Court of Justice (*see* the Diplomatic Privileges (International Court of Justice) Order 1959).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Act commences on a date to be appointed by the Governor-General by Order in Council. The reason for commencement by Order in Council is that it is proposed that the Act come into force on the same date as the Agreement enters into force in New Zealand. The Agreement will enter into force in New Zealand on the 30th day after the date of the deposit of New Zealand's instrument of ratification with the Secretary-General of the United Nations (*see* article 35(2) of the Agreement).

Clause 3 repeals section 10D of the principal Act and substitutes *new sections 10D and 10E*. The existing section 10D was inserted into the principal Act by the International Crimes and International Criminal Court Act 2000 to implement article 48 of the Rome Statute. *New sections 10D and 10E* now also implement the Agreement, adopted by the Assembly on 9 September 2002.

New section 10D(2) provides that the Governor-General may, by Order in Council, confer such privileges and immunities as may be required by article 48 of the Rome Statute or the Agreement, or both, on the ICC itself (*new section 10D(2)(a)*) and on all of the persons associated with the ICC who are referred to in article 48 of the Rome Statute or the Agreement (*new section 10D(2)(b) to (f)*).

New section 10D(3)(a) provides that an Order in Council made under *new section 10D(2)* may confer privileges and immunities on New Zealand citizens and permanent residents subject to some or all of the limitations in article 23 of the Agreement. *New section*

10D(3)(b) and (c) provides that an Order in Council made under *new section 10D(2)* may refer to the purpose of conferring the privileges and immunities (as set out in articles 25 and 26 of the Agreement) and also to how privileges and immunities may be waived (as set out in article 48(5) of the Rome Statute and articles 25 and 26 of the Agreement). Under *new section 10D(3)(d)*, the Governor-General may extend the privileges and immunities that may be conferred under *new section 10D(2)(b) and (c)* to members of the families forming part of the households of the persons listed in those paragraphs. Judges, the Prosecutor, Deputy Prosecutors, and the Registrar of the ICC (being persons listed in *new section 10D(2)(b)*) receive the same privileges and immunities as diplomats under article 48(2) of the Rome Statute and article 15 of the Agreement, meaning members of their families forming part of their households may also have privileges and immunities conferred on them. The families forming part of the households of the Deputy Registrar, staff of the Office of the Prosecutor, and staff of the Registry of the ICC (being persons listed in *new section 10D(2)(c)*) receive certain privileges and immunities under article 16 of the Agreement.

New section 10E relates to the privileges and immunities that may be conferred on certain representatives participating in the Assembly of States Parties or any of its subsidiary organs. Under *new section 10E(1)*, the Governor-General may, by Order in Council, confer such privileges and immunities as may be required by article 13 of the Agreement on the representatives listed. *New section 10E(2)* provides that an Order in Council made under *new section 10E(1)* may refer to the purpose of conferring the privileges and immunities and how they may be waived (as set out in article 25 of the Agreement).

Clause 4 consequentially amends section 11(1)(a) of the Immigration Act 1987. The amendment clarifies that counsel, experts, witnesses, victims and other persons required to be present at the seat of the ICC are not exempt from the requirement to hold a permit granted under the Immigration Act 1987. However, any permits or visas that are required by those persons must be dealt with speedily and granted free of charge (*see* article 30 of the Agreement).

Regulatory impact and compliance cost statement

Statement of problem and need for action

The proposal to take treaty action and amend the principal Act in relation to the Agreement needs to be seen in the context of New Zealand already being party to the Rome Statute. Under the Rome Statute, a permanent international criminal court is established with jurisdiction over perpetrators of the most serious international crimes. The Agreement supplements obligations in the Rome Statute, setting out the privileges and immunities that the ICC itself, Judges, and others associated with the Court enjoy while in the territory of a State Party on ICC business. It also covers persons attending meetings of the Assembly or its subsidiary organs. The privileges and immunities are similar to those given in other contexts, for example, to diplomats, but have been tailored to fit each specified group. The Agreement makes it clear, however, that the privileges and immunities are given in the interests of the ICC, not for the personal benefit of the individuals concerned, and can be waived.

Although the Agreement gives effect to obligations in the Rome Statute, it is a separate instrument and, therefore, requires treaty action in its own right and an amendment to the principal Act.

Statement of the public policy objective

New Zealand has an interest in seeing the perpetrators of the most grave international crimes brought to justice. It also has an interest in deterring the commission of these crimes. The establishment of the ICC helps to make this possible, but it is important that the ICC be able to carry out its functions free from interference. When ratifying the Rome Statute, New Zealand agreed, in principle, to the ICC and certain persons associated with it having certain protections in the form of privileges and immunities, which would be defined in a supplementary agreement.

By becoming party to this Agreement at an early stage, New Zealand demonstrates continued commitment to the ICC and ensures that it is in full compliance with the obligations already assumed when it became party to the Rome Statute.

*Statement of options for achieving the desired objective***Non-regulatory measures**

A treaty or agreement is used where it is necessary to place obligations on States that are binding under international law. While it is sometimes possible to assume treaty obligations without having to make changes to New Zealand law, this is not such a case. The principal Act contains a regime under which Orders in Council can be made as required to give particular privileges and immunities to representatives of international organisations or of States who come to New Zealand on official business. There is, for example, an existing Order in Council that relates to the International Court of Justice.

Regulatory measures

Before New Zealand ratified the Rome Statute, it passed implementing legislation in the form of the International Crimes and International Criminal Court Act 2000. That Act added a section to the Diplomatic Privileges and Immunities Act 1968 in order to allow an Order in Council to be made relating to the ICC itself and to its Judges, Prosecutors, and staff. To give full effect to the Agreement, the section does, however, need expansion to ensure that Orders in Council made under it can deal with all categories of persons mentioned in article 48 of the Rome Statute, and all categories of persons to whom the Agreement gives privileges and immunities.

It is proposed that a declaration be made under article 23 of the Agreement at the time the Agreement is ratified in order that the privileges and immunities given to New Zealand citizens and permanent residents may be limited to those specifically referred to in article 23 of the Agreement.

*Statement of the net benefit of this proposal***Benefits**

In this context, it is important for the independent functioning of the ICC that every State Party to the Rome Statute agrees to afford standard protections in the form of the privileges and immunities to the ICC and those associated with it. As noted above, it is desirable that New Zealand become party to the Agreement at an early stage to ensure full compliance with the obligations already assumed in relation to the ICC.

Costs

There are no quantifiable financial implications. The ICC is unlikely to sit here in the foreseeable future, nor is it likely that a meeting of the Assembly would be held here. There may be an occasional visit from ICC staff, but the associated costs arising from this Agreement are likely to be negligible.

Business compliance cost statement

This proposal does not involve compliance costs for business.

Consultation

The following government departments have been consulted during the development of this Bill:

Department of Corrections

Department for Courts

Department of Labour (Immigration)

Inland Revenue Department

Ministry of Economic Development

Ministry of Justice

New Zealand Customs Service

New Zealand Police

The Treasury.

Hon Phil Goff

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Diplomatic Privileges and Immunities Amend-
ment Act **2003**.
- (2) In this Act, the Diplomatic Privileges and Immunities Act
1968¹ is called “the principal Act”. 5

¹ 1968 No 36

2 Commencement

This Act comes into force on a date appointed by the
Governor-General by Order in Council.

3 New sections 10D and 10E substituted

The principal Act is amended by repealing section 10D, and 10
substituting the following sections:

- “10D **Privileges and immunities of International Criminal Court and its Judges, Prosecutor, Deputy Prosecutors, and staff**
- “(1) In this section and **section 10E**,—
- “**Agreement** means the Agreement on the Privileges and Immunities of the International Criminal Court adopted by the Assembly of States Parties on 9 September 2002 5
- “**Assembly of States Parties** means the Assembly of States Parties to the Rome Statute
- “**ICC** means the International Criminal Court established under the Rome Statute; and includes any of the organs of the International Criminal Court referred to in the Rome Statute 10
- “**Rome Statute** means the Rome Statute of the International Criminal Court dated 17 July 1998 (the English text of which is set out in the Schedule to the International Crimes and International Criminal Court Act 2000). 15
- “(2) The Governor-General may, by Order in Council, confer such privileges and immunities as may be required by—
- “(a) article 48(1) of the Rome Statute or articles 2 to 12 of the Agreement, or both, on the ICC: 20
- “(b) article 48(2) of the Rome Statute or article 15 of the Agreement, or both, on the following persons:
- “(i) Judges of the ICC:
- “(ii) the Prosecutor of the ICC:
- “(iii) Deputy Prosecutors of the ICC: 25
- “(iv) the Registrar of the ICC:
- “(c) article 48(3) of the Rome Statute or article 16 of the Agreement, or both, on the following persons:
- “(i) the Deputy Registrar of the ICC:
- “(ii) staff of the Office of the Prosecutor of the ICC: 30
- “(iii) staff of the Registry of the ICC:
- “(d) article 48(4) of the Rome Statute or articles 18 to 22 of the Agreement, or both, on counsel, witnesses, victims, experts, and any other person required to be present at the seat of the ICC: 35
- “(e) article 14 of the Agreement on representatives of States participating in the proceedings of the ICC:
- “(f) article 17 of the Agreement on personnel recruited locally by the ICC, other than persons referred to in **paragraphs (b) to (e)**. 40

- “(3) An Order in Council made under **subsection (2)** may—
- “(a) confer privileges and immunities on New Zealand citizens and permanent residents subject to some or all of the limitations set out in article 23 of the Agreement; and 5
 - “(b) refer to the purpose of conferring the privileges and immunities (as set out in articles 25 and 26 of the Agreement); and
 - “(c) refer to how the privileges and immunities may be waived (as set out in article 48(5) of the Rome Statute and articles 25 and 26 of the Agreement); and 10
 - “(d) extend the privileges and immunities conferred on the persons referred to in **subsection (2)(b) and (c)** to members of their families forming part of their households (as contemplated by article 48(2) of the Rome Statute and to the extent provided in articles 15 and 16 of the Agreement). 15
- “10E **Privileges and immunities of representatives at Assembly of States Parties or its subsidiary organs**
- “(1) The Governor-General may, by Order in Council, confer such 20
privileges and immunities as may be required by article 13 of the Agreement on the following persons:
- “(a) representatives of States Parties to the Rome Statute attending meetings of the Assembly of States Parties or any of its subsidiary organs: 25
 - “(b) representatives of States attending meetings of the Assembly of States Parties or any of its subsidiary organs as observers, as permitted by article 112(1) of the Rome Statute:
 - “(c) representatives of States or intergovernmental organisations invited to meetings of the Assembly of States Parties or any of its subsidiary organs. 30
- “(2) An Order in Council made under **subsection (1)** may refer to the purpose of conferring the privileges and immunities and how the privileges and immunities may be waived (as set out in 35
article 25 of the Agreement).”

- 4 Consequential amendment to Immigration Act 1987**
Section 11(1)(a) of the Immigration Act 1987 (1987 No 74) is amended by inserting, after the words “the Diplomatic Privileges and Immunities Act 1968”, the words “, other than a person referred to in **section 10D(2)(d)** of that Act,”.

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