



Australian Government

Department of Foreign Affairs and Trade

PRIVILEGES AND IMMUNITIES OF FOREIGN REPRESENTATIVES

This pamphlet provides a broad outline of the privileges and immunities of foreign representatives in Australia. Further detail on specific cases may be requested from Protocol Branch.

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Who has immunity?

Under Australian and international law, members of foreign diplomatic missions, consular posts and certain international organisations must be accorded certain rights, privileges and immunities by law enforcement agencies and before the Courts. Equally however, the law also places an obligation on these foreign representatives to respect the laws and regulations of Australia.

Privileges and immunities are extended by the Australian Government to foreign representatives to enable them to carry out their proper functions. They are **not**, however, a blanket authority to disregard the law or the lawful directions of a police officer or a means to deliberately avoid liability.

There are different levels of immunity

Levels of privileges and immunities vary according to the status of the representative. Some representatives have complete immunity from criminal jurisdiction and almost complete

immunity in civil and administrative jurisdictions (essentially, they can only be brought to Court for matters relating to private commercial and financial transactions). Other categories of representatives may have more limited (“functional”) immunity. This means that their immunity applies only in respect of their official duties.

The matrix overleaf provides a simplified guide to immunities by category of representative. It also covers the status of family members.

How is immunity established?

Entitlement to privileges and immunities is evidenced by a colour coded identification card issued to accredited foreign officials by DFAT. The reverse of the card summarises the level of privileges and immunities the official is entitled to. Some officials, such as those from international organisations temporarily in Australia on official mission, do not have a DFAT identification card but may still be entitled to some privileges and immunities.

If a person claims immunity but is *unable to produce an identity card*, they may, if necessary, be asked to attend the nearest police station to establish their status. This does not constitute “arrest or detention”. Identity may be established by contacting the relevant mission or having a family member bring identification to the station or through DFAT. DFAT is also able to advise on the extent of immunities an official may be entitled to.

Arrest or detention

Immunity may include what is referred to as personal inviolability. Inviolability is absolute for diplomats and precludes arrest or detention.

Consular officers are exempt from jurisdiction in most matters relating to the exercise of their functions. They are liable for actions taken in a personal capacity. They may be arrested or detained, but only pursuant to a decision by a competent judicial authority with relation to a “grave crime” (an offence punishable on a first conviction by imprisonment for 5 or more years).

At the time of arrest or criminal proceedings being instituted against consular staff (or an Honorary Consul), the head of the consular post or diplomatic mission must be promptly notified. DFAT must also be notified.

Traffic violations and drink driving

Stopping the vehicle of an accredited official and issuing a traffic infringement notice does not constitute arrest or detention and is permissible. Officials are required to stop if requested to do so by a police officer and may also be asked to submit to a breath screening test.

A vehicle flying a national flag (indicating the presence of the head of mission on official duty) should not be required to stop unless it has breached the law.

A diplomatic or consular officer cannot be arrested if they refuse, or fail, a breath screening test. A consular officer may, however, be charged and later summonsed to appear before a court.

Regardless of immunity, a police officer is under no obligation to allow a person to continue to drive where it is considered this might involve a threat to public safety. The police may make whatever arrangements are considered appropriate for the person to continue safely to their destination.

In dealing with such issues it is important to be aware of the need to

respect the dignity of foreign representatives while at the same time ensuring the safety of the community.

Inviolability of premises

Police officers (or any public official) must exercise great care in entering official premises. Diplomatic premises (comprising the offices of the mission, the official residence of the head of mission, and the residences of accredited diplomatic staff) may only be entered with the express permission of the head of mission concerned. Consular premises (comprising the offices of the consulate) may only be entered with the express permission of the head of post concerned, except in the case of a fire or other disaster requiring prompt protective action. Offices of international organisations may also have inviolability.

Official documents are inviolable and must not be interfered with wherever they may be.

Notification

Problems and incidents with members of the diplomatic or consular corps or international organisations relating to privileges and immunities should be reported promptly through the appropriate police diplomatic/consular liaison channels to DFAT.

DFAT is able and prepared to intercede where claims of immunity may be inappropriate in terms of Australia’s implementation of its international obligations.

**DUE RESPECT SHOULD BE
ACCORDED AT ALL TIMES TO ALL
FOREIGN REPRESENTATIVES**

SUMMARY OF IMMUNITIES COVERING FOREIGN REPRESENTATIVES

Category	Arrest / Detention	Jurisdiction / Prosecution	Required to give evidence	Personal search	Official premises search	Residential entry / search	Motor vehicle search	Drink driving / Breath testing	Dependents
Diplomatic									
Diplomatic Agents (RED ID Cards)	Immune	Immune	Immune	Immune	Immune	Immune	Immune	Breath test may be requested but not enforceable	Same as accredited official
Administrative/technical Staff (BLUE ID Card)	Immune	Criminal matters: immune. For civil and administrative: not immune, except for acts performed in the course of duties	Immune	Immune	Immune	Immune	Immune	Breath test may be requested but not enforceable	Same as accredited official
Consular									
Consular officer (GREEN ID Card)	Immune, except under court warrant for "grave crime" – see definition over	Not immune, except in respect of acts performed in exercise of consular functions	Not immune, except in relation to their consular functions	Immune	Immune	Not immune	Not immune	Breath test may be requested; may be summonsed for drink-driving	No immunities
Consular employees (LIME ID Card)	Not immune	Not immune, except in respect of acts performed in exercise of consular functions	Not immune, except in relation to their consular functions	Not immune	Immune	Not immune	Not immune	Not immune	No immunities
Honorary consuls (GREY ID Card)	Not immune	Not immune, except in respect of acts performed in exercise of consular functions	Not immune, except in relation to their consular functions	Not immune	Not immune except official papers (but see Note 2 below 'Protection of the consular premises)	Not immune	Not immune	Not immune	No immunities
International Organisations									
(CAMEL ID Card or other if the individual is not resident in Australia) (see note 1)	Generally not immune, see Note 1	Generally not immune, except in respect of official acts, see Note 1	See Note 1	See Note 1	Immune	Generally not immune, see Note 1	Generally not immune, see Note 1	Generally not immune, see Note 1	Generally not immune, see Note 1
Service Staff									
(YELLOW ID Card)	Not immune	Not immune except of acts performed in the course of duty.	Not immune	Not immune	Immune	Not immune unless diplomatic or consular premises	Not immune	Not immune	No immunities
Overseas Missions									
(HKETO AND TECO)	See Note 1	See Note 1	See Note 1	See Note 1	See Note 1	See Note 1	See Note 1	Breath test may be requested. See Note 1	See Note 1

- Where the person is an Australian citizen or permanent resident, full immunities may not apply. Clarification should be sought from DFAT.
- Immunities may be waived by the sending state or organisation to allow prosecution, but prosecution may not proceed before such waiver.
- Any matter involving questions of arrest or prosecution involving a person who may have immunity should be referred through the appropriate police channels to DFAT
- Official papers and sealed diplomatic and consular consignments are inviolable.

NOTE 1: Immunities may vary depending on the status of the office or individual. Any matter involving immunity should be referred to DFAT. Until status is confirmed due respect should be accorded.

NOTE 2: Under Article 59 of the Vienna Convention on Consular Relations, the receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consul or officer, against any intrusion or damage, and to prevent any disturbance of the peace of the consular post or impairment of its dignity.