

IMMUNITIES OF FOREIGN REPRESENTATIVES

**The purpose of immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions and consular posts.**

Who has immunities?

Under Australian and international law, foreign officials accredited to diplomatic missions in Canberra and to consular posts in other capital cities must be accorded certain immunities by law enforcement agencies and the courts

• representatives of international organisations may also be entitled to immunities

• dependants of some foreign officials are also entitled to immunities

• Honorary Consuls, who are mostly Australian citizens or permanent residents, have immunities only in respect of acts performed in the course of consular functions.

Despite having immunities, all members of the diplomatic and consular corps are required to respect Australian laws and regulations and the lawful directions of police.

Levels of immunity

Levels of immunity vary according to the status of the representative, which in turn reflects their official functions.

The more limited the person’s functions, the more restricted their immunity.

Driving a motor vehicle is not a diplomatic or consular function.

How is immunity established?

DFAT issues colour-coded identity cards to accredited members of the diplomatic and consular corps, and to the spouses of some.

Text on the back of each card summarises the holder’s entitlements.

If a person asserts immunity but cannot produce an identity card, they can be asked respectfully to attend a police station to establish their status (this does not constitute arrest or detention).

Questions about a person’s status should be referred to DFAT’s Protocol Branch.

Waiving immunities

Immunities may be waived by the foreign representative’s government or organisation to allow prosecution but prosecution may not proceed before a waiver is given.Arrest or detention

If a member of the diplomatic or consular corps is arrested or detained, DFAT’s Protocol Branch and the head of the relevant mission or post should be promptly notified.

Driving offences

Stopping the vehicle of an accredited official does not constitute arrest or detention and is permissible

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

Accredited officials may be asked to take a breath screening test but not all are obliged to comply, and they cannot be arrested for refusing or failing the test.

Police are not obliged to allow a person to continue driving if there is a risk to public safety

• they should assist respectfully with appropriate arrangements for the person to travel to their destination.

Inviolability of premises

Diplomatic premises (the offices of the mission and the residences of accredited diplomatic staff) may only be entered with the express permission of the head of mission.

Consular offices may only be entered with the express permission of the head of post, unless a fire or other disaster requires prompt protective action.

The office of an Honorary Consul is not inviolable but it must be protected from intrusion, damage or impairment of dignity.

Inviolability of official documents

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

• this includes properly sealed and tagged diplomatic bags.

Notification

Incidents involving the immunities of members of the diplomatic and consular corps or international organisations should be reported promptly to DFAT’s Protocol Branch.

Further information and advice on specific cases may be requested from Protocol Branch.

Contact:

protocol.branch@dfat.gov.au

For urgent matters outside working hours: Emergency Duty Officer 0418 167 127

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| SUMMARY OF IMMUNITIES COVERING FOREIGN REPRESENTATIVES | | | | | | | | | |
| Category | Arrest / Detention | Jurisdiction / Prosecution | Personal Search | Official premises search | Residential search | Motor vehicle search | Driving - alcohol/drug testing | Required to give evidence | Dependants |
| Diplomatic | | | | | | | | | |
| Diplomatic agent  (Red ID card) | Immune | Immune | Immune | Immune | Immune | Immune | May be requested but not enforceable | Immune | Same as accredited official |
| Administrative/ technical staff  (Blue ID card) | Immune | Criminal matters-immune  Civil and Administrative-not immune, except in relation to official functions | Immune | Immune | Immune | Immune | May be requested but not enforceable | Immune | Same as accredited official |
| Consular | | | | | | | | | |
| Consular officer  (Green ID card) | Immune, except under court warrant for “grave crime” | Not immune, except in relation to official functions | Immune | Immune | Not immune | Not immune | May be requested but not enforceable, although may be summonsed for refusing | Not immune, except in relation to official functions | No immunities |
| Consular employees  (Olive ID card) | Not immune | Not immune, except in relation to official functions | Not immune | Immune | Not immune | Not immune | Not immune | Not immune, except in relation to official functions | No immunities |
| Honorary consuls  (Grey ID card) | Not immune | Not immune, except in relation to official functions | Not immune | Not immune except official papers, which should be kept separately | Not immune | Not immune | Not immune | Not immune, except in relation to official functions | No immunities |
| Service staff | | | | | | | | | |
| (Yellow ID card) | Not immune | Not immune, except for acts performed in the course of official functions | Not immune | Immune | Not immune unless diplomatic or consular premises | Not immune | Not immune | Not immune | No immunities |
| International Organisations | | | | | | | | | |
| (Bronze ID card) | Generally not immune - contact Protocol Branch | Generally not immune, except in relation to official functions - contact Protocol Branch | Contact Protocol Branch | Immune | Generally not immune - contact Protocol Branch | Generally not immune - contact Protocol Branch | Generally not immune - contact Protocol Branch | Contact Protocol Branch | Generally not immune - contact Protocol Branch |
| Overseas Missions | | | | | | | | | |
| Taipei Economic & Cultural Office (TECO) Canberra  (Purple ID card) | Immune | Immune | Immune | Immune | Immune | Immune | May be requested but not enforceable | Immune | Same as accredited official |
| Taipei Economic & Cultural Office (TECO) A&T officials, Canberra, all TECO officials in state offices;  (Purple ID card) | Not immune | Not immune, except in relation to official functions | Not immune | Immune | Not immune | Not immune | Not immune | Not immune, except in relation to official functions | No immunities |
| Hong Kong Economic & Trade Office (HKETO)  (Purple ID card) | Not immune | Not immune, except in relation to official functions | Not immune | Immune | Not immune | Not immune | Not immune | Not immune, except in relation to official functions | No immunities |