

Immunity of State officials from foreign criminal jurisdiction

29 The Commission would appreciate being provided by States with information on their legislation and practice, in particular judicial practice, related to limits and exceptions to the immunity of State officials from foreign criminal jurisdiction

AUSTRALIA'S RESPONSE

Foreign officials

There is scope under the *Diplomatic Privileges and Immunities Act 1967* for foreign officials to be granted immunities, however foreign State officials do not, as a matter of course, enjoy immunities in Australia. In light of this, foreign officials can be charged with various crimes under the national system, including for serious crimes such as torture.

Should a foreign official be charged with an offence under Australian law, under section 14 of the *Diplomatic Privileges and Immunities Act 1967* and section 12 of the *Consular Privileges and Immunities Act 1972* the Foreign Minister can issue a 'certificate' when requested by the courts or law enforcement agencies. These certificates provide factual information relating to an individual's diplomatic or consular status and are intended for a court to determine questions of immunity. For prosecution of crimes such as torture, the written consent of the Attorney-General is required.

Diplomatic agents

The *Diplomatic Privileges and Immunities Act 1967* (Cth) (section 7) implements the 1961 *Vienna Convention on Diplomatic Relations* into Australian law. Section 7(1) of the Act provides that Articles 1, 22-24 and 27-40 of the Convention have the force of law in Australia. Accordingly, diplomatic agents are not liable to any form of arrest or detention and enjoy immunity from Australia's criminal jurisdiction. A "diplomatic agent" is defined under the Convention as the head of the mission or a member of the diplomatic staff of the mission. Under section 7(3) of the Act, Commonwealth laws relating to quarantine, or prohibitions or restrictions on the import to/export from Australia of animals, plants or goods, continue to apply, however, the continuing application of such laws does not prejudice the immunity from suit, or from civil or criminal process, that a person has by virtue of section 7(1).

Similarly, section 5(1) of the *Consular Privileges and Immunities Act 1972* (Cth) incorporates into Australian law certain provisions of the 1963 *Vienna Convention on Consular Relations*. Section 5(3) contains a savings clause, equivalent to section 7(3) of the *Diplomatic Privileges and Immunities Act 1967*, concerning quarantine and related laws.

Section 36(1) of the *Foreign States Immunities Act 1985* (Cth) extends the privileges and immunities accorded to the head of a diplomatic mission in Australia under the *Diplomatic Privileges and Immunities Act* to heads of foreign States and their spouses. By operation of section 36(2), section 36(1) does not affect the application of any law of Australia with respect to taxation.