



BETWEEN:

COMMISSIONER OF TAXATION  
Appellant

and

KAMAL JAYASINGHE  
Respondent

RESPONDENT'S SUBMISSIONS

**Part I: Publication**

1. These submissions are in a form suitable for publication on the internet.

**Part II: Issue in the appeal**

2. There are two issues in the appeal, on both of which the Appellant must succeed:
  - (a) an issue as to the construction of s 6 of the *International Organisations (Privileges and Immunities) Act 1963* ("IOPI Act" or "1963 Act"), an Australian domestic statute: the Tribunal and the majority below correctly found that its terms bear their ordinary meaning in Australian law, not a meaning which turns on the acts and decisions of a body outside Australia;
  - (b) an issue as to the meaning and effect of the Appellant's public ruling TD92/153: the Tribunal and the majority below correctly construed the ruling as applying to the Respondent.
3. The first issue does not, as the Appellant implies, involve a factual enquiry;<sup>1</sup> such an enquiry is not open on an "appeal" on a question of law.<sup>2</sup>

<sup>1</sup> The Appellant's submissions ("AS") at [3] propose a false dichotomy; neither "*the application of some Australia common law conception of 'office' to the facts of the case*" nor "*whether ... the UN has established and designated an office*" is in contest.

<sup>2</sup> The proceedings in the court below were brought under s 44 of the Administrative Appeals Tribunal Act, as an "appeal to the Federal Court of Australia, *on a question of law*" from the decision of the Tribunal; the "question of law is ... not merely a qualifying condition [but] the subject matter of the appeal itself," *TNT Skypak International (Aust) Pty Ltd v FC of T* (1988) 82 ALR 175, 17.8 (Gummow J); *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390, [33] (French CJ); *Osland v Secretary to the Dept of Justice (No 2)* (2010) 241 CLR 320, [21] (French CJ, Gummow and Bell JJ).

**Part III: Judiciary Act 1903**

4. The Respondent certifies that he considers that notice pursuant to s 78B of the *Judiciary Act 1903* is not required.

**Part IV: Facts**

- 5 5. The “appeal” to the Court below, and in consequence the appeal to this Court, is limited to an appeal on error of law in the reasoning in the decision of the Administrative Appeals Tribunal. The relevant facts are those found by the Tribunal, at [9]-[15], [21]-[22], [26]-[32], [38]-[52] and [57]-[60] of its reasons.
- 10 6. Materially, the Tribunal found that the position occupied by the Respondent carried distinct substantive responsibilities and authority,<sup>3</sup> both subsisted independently of and was occupied by predecessors and successors of the Respondent,<sup>4</sup> and was held out to others by the United Nations as being an “office”.<sup>5</sup>
- 15 7. The Tribunal also found,<sup>6</sup> and the Full Court unanimously agreed,<sup>7</sup> that despite the language of his engagement contract, the relationship between the Respondent and the United Nations was one of employee and employer. There is no appeal against that finding (nor is one open). It misstates the facts to say that “the Respondent was *given the legal status of an independent contractor*.”<sup>8</sup>

**Part V: Statutes and Regulations**

- 20 8. In addition to the provisions and documents referred to in Part VII of the Appellant’s submissions, also relevant to the appeal are (a) the legislation; and (b) the regulations made under the IOPI Act 1963, together with the treaties obligations under which are performed by the making of those regulations; which are listed and extracted in the annexure to these submissions.

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<sup>3</sup> Reasons at [27], [39]-[42], [45] AB xx.

<sup>4</sup> Reasons at [43], [44] AB xx.

<sup>5</sup> Reasons at [46],[47], [50] AB xx.

<sup>6</sup> Reasons at [51], [60] AB xx, xx.

<sup>7</sup> Allsop CJ at [38] AB xx.30; Pagone and Davies JJ at [53]-[54], [57] AB xx-xx.

<sup>8</sup> AS [7]. A contractual assertion of “legal status” may create an estoppel as between the Respondent and his employer, but not as between the Respondent and the Appellant; see [42] and footnote 64 below.

**Part VI: Argument in answer to the Appellant**

*(1) Respondent's submissions in summary*

9. The Tribunal, and the Full Court, found against the Appellant on two independent bases: one going to statutory construction, and one to the effect of the Appellant's ruling. The Appellant must succeed on both grounds. The Respondent submits that the appeal on each ground should be dismissed.

*(a) Construction of the IOPI Act*

10. The sole issue in the first ground of appeal is the connotation<sup>9</sup> of the phrase "person who holds an office" in s 6 of the IOPI Act.

10 11. The connotation of a term used in an Australian domestic statute is a matter of Australian law. What is denoted by the term turns in each case on the relevant facts, some of which may be the acts of a body outside Australia.<sup>10</sup> Neither the connotation nor the denotation of a statutory term depends on the label given by the parties to their relationship.

15 12. The language of the IOPI Act, its context and the legislative history all indicate that the word "office" in the Act bears the connotation it ordinarily has in Australian law. That connotation is "usually ... a position of defined authority in an organisation",<sup>11</sup> or in the words of Rowlatt J,<sup>12</sup> "... a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, and which went on and could be filled in succession by successive holders".

20 13. It is not in contest that if that is the connotation of the statutory phrase, the Respondent is within its denotation and the appeal must be dismissed.

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<sup>9</sup> Adopting the logical rather than the popular meaning of "connotation": the inherent meaning of the phrase (as distinct from what it applies to, or denotes), "the attributes which the words signify," *Street v Queensland Bar Association* (1989) 168 CLR 461 at 537–8 (Dawson J); in relation to the distinction between connotation and denotation, *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Professional Engineers' Assn* (1959) 107 CLR 208 at 267 (Windeyer J); *Eastman v R* (2000) 203 CLR 1, 45 [142]-[143] (McHugh J).

<sup>10</sup> For example, in the present appeal, the establishment of a permanent position, or the act of appointing a person to a position.

<sup>11</sup> *Grealy v FC of T* (1989) 24 FCR 405, 411 (Northrop, Spender and Pincus JJ), distinguished in *Sykes v Cleary* (1992) 176 CLR 77, 96.

<sup>12</sup> *Great Western Railway Co. v Bater* [1920] 3 KB 266.

(b) *The Appellant's Ruling*

14. The Tribunal found that the Respondent's "role of Project Manager include[d] managerial, administrative, negotiation, supervision and numerous other activities" and that he was not engaged only as an expert or consultant.<sup>13</sup> On a fair and natural reading of the Appellant's ruling, the Respondent did not fall within the exception from the ruling of "persons engaged ... as experts or consultants". The Appellant is bound to assess the Respondent as a "person who holds an office" in the UN and thus as being exempt from tax.

(2) Construction of the IOPI Act

(a) *Approaches to statutory interpretation*

15. The Act and the Regulations *ex facie* confer immunity from tax on the Respondent: within the ordinary meaning of the words in Australian law, he was, on the Tribunal's findings of fact, the "holder of an office" in the UN. The Appellant, like Allsop CJ in dissent, appeals to an asserted context and purpose to displace the ordinary meaning.

16. An exercise in statutory construction involves a tension among, and so a weighing of, different considerations, principally on the one hand the statutory text and on the other matters of context and purpose. So much is manifest from the multitude of decisions cited by Allsop CJ,<sup>14</sup> against which there may be juxtaposed the many observations in this Court exemplified by those in *FC of T v Consolidated Media Holdings Ltd*:<sup>15</sup>

"This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the [statutory] text'. So must the task of statutory construction end. The statutory text must be considered in its context. That context includes legislative history and extrinsic materials.

<sup>13</sup> Reasons at [56-57], AB xx.

<sup>14</sup> Allsop CJ at [7]-[11], AB xx.

<sup>15</sup> (2012) 250 CLR 503, 519 [39], citations omitted. See also *Nominal Defendant v GLG Australia Pty Ltd* (2006) 228 CLR 529 at [22] ("The words of the statute ... have paramount significance"), *Northern Territory v Collins* (2008) 235 CLR 619 at [99] ("Construction must begin with a consideration of the text itself"), *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47], *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252 at [31], [74], *Travellex Ltd v FC of T* (2010) 241 CLR 510 at [82] ("the surest guide to legislative intention is the language which has actually been employed in the text of the legislation"), *Momcilovic v R* (2011) 245 CLR 1 at [441], *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* (2012) 248 CLR 37 at [23], [45], *X7 v Australian Crime Commission* (2013) 248 CLR 92 at [25], *Kline v Official Secretary to the Governor-General* (2013) 249 CLR 645 at [32], *FC of T v Unit Trend Services Pty Ltd* (2013) 250 CLR 523 at [47], *Thiess v Collector of Customs* (2014) 250 CLR 664 at [22], *Alphapharm Pty Ltd v H Lundbeck A/S* (2014) 254 CLR 247 at [39], *Uelese v Minister for Immigration and Border Protection* (2015) 256 CLR 203 at [112], *Firebird Global Master Fund II Ltd v Republic of Nauru* (2015) 326 ALR 396 at [186], *Tabcorp Holdings Ltd v Victoria* (2016) 328 ALR 375 at [8].

Understanding context has utility if, and in so far as, it assists in fixing the meaning of the statutory text. Legislative history and extrinsic materials cannot displace the meaning of the statutory text. Nor is their examination an end in itself.”

5 17. As appears below, a more complete consideration of context than that undertaken by the Appellant supports adoption of the ordinary meaning of “holds an office” in the Act and Regulations.

18. Where an Act gives force to or is enacted to perform Australia’s obligations under a particular treaty, the terms of that treaty are relevant to the construction of the Act, but  
10 “The relevant law of Australia is found in the Act and in the Regulations under it. It is Australian principles of statutory interpretation which must be applied to the Act and the Regulations.”<sup>16</sup> The repeated observation<sup>17</sup> that “Australian courts will endeavour to adopt a construction of the Act and the Regulations, if that construction is available, which conforms to the Convention”<sup>18</sup> was made in the context of determining whether Australia  
15 had fallen short of compliance with its treaty obligations, not whether it had gone beyond them. In the latter context, the observation that “despite these respects in which the Convention may be used in construing the Act, it is the words of the Act which govern”<sup>19</sup> is apposite. Like all the other treaties complied with by the making of Regulations under the 1963 Act, the 1946 Convention<sup>20</sup> deals only with the minimum relief which the parties  
20 agree to afford, and is silent as to whether the parties (including Australia) may go further; it affords no guidance in resolution of the present appeal.

*(b) The text and context of the Act and Regulations*

19. The IOPI Act of 1963, unlike its 1948 predecessor, is in terms one of general application: as was expressly stated by the Attorney General on its introduction,<sup>21</sup> the Act and

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<sup>16</sup> *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004 (“QAAH”)* (2006) 231 CLR 1, 14 [34] (Gummow ACJ, Callinan, Heydon and Crennan JJ).

<sup>17</sup> Invoking s 15AB of the Acts Interpretation Act

<sup>18</sup> *QAAH* (2006) 231 CLR 1 at 15 [34]; adopted in *Minister for Immigration and Border Protection v WZAPN* (2015) 254 CLR 610 at 630 [53] (French CJ, Kiefel, Bell and Keane JJ); *Macoun v FC of T* (2015) 326 ALR 452 at [67]. In each of these cases, an attempt to invoke the terms of an international treaty as the contextual primary source of meaning of the Australian statute was unsuccessful.

<sup>19</sup> *QAAH* (2006) 231 CLR 1 at 16 [34].

<sup>20</sup> Convention on the Privileges and Immunities of the United Nations (done at London on 13 February 1946) [1949] ATS 3 (“the 1946 Convention”).

<sup>21</sup> Second reading speech, Hansard, H of R, 8 May 1963, p 1162. There was no explanatory memorandum to the Bill for the Act. The Attorney’s second reading speech was repeated in the Senate by Senator Gorton (Hansard, Senate, 21 August 1963, pp 94-97).

regulations made under it “are intended to cover the whole field” of privileges and immunities associated with international organisations. Unlike the 1948 Act, it is not confined to, and indeed at enactment and for the following 23 years it did not apply to, the UN and its specialised agencies.<sup>22</sup> Between 1963 and April 1986,<sup>23</sup> regulations relating to the privileges and immunities of persons “holding an office” were made in relation to 20 other international organisations; after April 1986 such regulations have been made in relation to a further 18 other organisations. None of those organisations was the subject of either the 1946 or the 1947<sup>24</sup> UN Conventions.

20. Although enacted to give effect to obligations assumed by Australia by accession to international treaties, the IOPI Act and the regulations made under it are entirely domestic legislation. None of the treaties have been incorporated into Australian municipal law.<sup>25</sup> The expression “person who holds an office” in s 6 of the Act (and so in each regulation<sup>26</sup> made in respect of an international organisation) has a single constant connotation, which is a matter of Australian law. The connotation does not vary from one treaty, organisation or Regulation to the next. The circumstance that the person or persons denoted by that connotation will differ according to the acts of the organisation concerned – what posts are created, with what degree of permanence and authority, and who are appointed to fill those posts – does not change the connotation, or meaning, of the term.
21. Starting with the text of the legislation,<sup>27</sup> the term “office” has a well established ordinary meaning in the context of a position held in an organisation: it “usually connotes a position

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<sup>22</sup> IOPI Act (No 50 of 1963, as enacted), s 2; see [31]-[33] below.

<sup>23</sup> The United Nations (Privileges and Immunities) Regulations 1986 (SR 66 of 1986, “the UNPI Regulations”) were made on 17 April 1986.

<sup>24</sup> Convention on the Privileges and Immunities of the Specialized Agencies (21 November 1947, New York) [1988] ATS 41 (“the 1947 Convention”).

<sup>25</sup> “It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute.” (*Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 286-7.) In particular, section 3 of the Charter of the United Nations Act 1945 “does not make the Charter itself binding on individuals within Australia as part of the law of the Commonwealth” (*Bradley v Commonwealth* (1973) 128 CLR 557, 582 (Barwick CJ and Gibbs J), citing *Chow Hung Ching v R* (1948) 77 CLR 449, 478 and *R v Burgess; Ex parte Henry* (1936) 55 CLR 608, 644); and Australia’s obligations under the 1946 and 1947 UN Conventions are performed, but those Conventions were not incorporated into Australian law, by the IOPI Act 1963 (nor by its 1948 predecessor).

<sup>26</sup> Legislation Act 2003, s 13(1)(b): “unless the contrary intention appears ... (b) expressions used in any [legislative] instrument ... have the same meaning as in the enabling legislation as in force from time to time.”

<sup>27</sup> *Consolidated Media Holdings*, see [16] above.

of defined authority in an organization”,<sup>28</sup> “a position or post which goes on without regard to the identity of the holder of it from time to time”,<sup>29</sup> or in the words of Rowlatt J in *Great Western Railway Co v Bater*,<sup>30</sup> widely adopted in Australia,<sup>31</sup> “... a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, and which went on and could be filled in succession by successive holders.”

22. The statutory context of the IOPI Act confirms that this is the meaning of the term in that Act. The Act is concerned with the privileges and immunities afforded to persons in a significant relationship with an international organisation: the holders of a “high office”, accredited representatives of the organisation at an international conference, holders of “an office in” the organisation, persons serving on a committee of or performing a mission on behalf of the organisation,<sup>32</sup> and members of, and advocates and witnesses before, international tribunals.<sup>33</sup> “An office in” the organisation stands in contrast to a transient engagement, casually or for a specified term, of a particular person.<sup>34</sup> The context of the IOPI Act is quite different from the context of s 44 of the Constitution, considered in *Sykes v Cleary*,<sup>35</sup> where significance lay not in the permanence of the position but in the potential for conflict between the duties of the two positions in issue.<sup>36</sup>
23. Whether a position has the qualities which bring it within the protection afforded by any of the provisions of the Act, and whether a person occupies the position, are to be

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<sup>28</sup> *Sykes v Cleary* (1992) 176 CLR 77, 96-7 (Mason CJ, Toohey and McHugh JJ), adopting the language of Northrop, Spender and Pincus JJ in *Grealy v FC of T* (1989) 24 FCR 405, 411.

<sup>29</sup> *Mitchell and Edon v Ross* [1960] 1 Ch 498 at 530 (Harman LJ).

<sup>30</sup> [1920] 3 KB 266, 274, a formulation described by Lord Wilberforce in *Edwards v Clinch* [1982] AC 845, 860 as “bred into the bones of every practitioner in income tax matters and, more importantly, known to the legislature ...”

<sup>31</sup> *Mabey v Australian Film Commission* (1984) 57 ALR 583 (Wilcox J); *FC of T v White* (1985) 7 FCR 566, 572 (Lockhart J, Neaves J agreeing); *FC of T v Sealy* (1987) 78 ALR 387, 392 (Pincus J); *Sykes v Cleary* (1992) 176 CLR 77, 96 (Mason CJ, Toohey and McHugh JJ) (where the Constitutional context called for a different meaning); *Greek Orthodox Community of South Australia Inc v Ermogenous* (2000) 77 SASR 523, [204] (Bleby J). The actual decision in *Bater*, at first instance and on appeal (AS [45-47]), turned on its facts and is not in point.

<sup>32</sup> Respectively paragraphs (b), (c), (d) and (e) of s 6(1).

<sup>33</sup> Sections 9, 9A, 9B and 9C.

<sup>34</sup> As for example in *Grealy v FC of T* (1989) 24 FCR 405.

<sup>35</sup> (1992) 176 CLR 77.

<sup>36</sup> (1992) 176 CLR 77, 96, identifying “three factors that give rise to ... incompatibility” between the two positions.

determined by objective matters: the attributes of the position and the fact of appointment. It is not a matter delegated to an official of the organisation to determine.

24. It is not in contest that the position held by the Respondent was an “office” within the meaning identified in the authorities cited above.<sup>37</sup>

5                   (c) *The context of the UN Conventions*

25. Both Allsop CJ and the Appellant, invoking the reasons of this Court in *Macoun v FC of T*,<sup>38</sup> place reliance on the 1946 and 1947 Conventions as affording a context which ascribes to the phrase “holder of an office” a different meaning. Those conventions do not comprise a relevant context.

10                   (i) *The purpose of the 1963 IOPI Act*

26. The clear purpose of the IOPI Act, both in its structure and its language, is to provide objective criteria by which may be determined the entitlements of all of international organisations to which Australia is a party,<sup>39</sup> and of related persons, to the privileges and immunities provided for by the Act.<sup>40</sup> The Act is general in its terms and ambulatory in its operation.

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27. The criteria for entitlements of persons are objective and equally applicable to all international organisations, not varying according to the individual discrimen from time to time preferred by each organisation. In the context of s 6(1)(d), the words “person who holds an office in an international organisation” are not to be read as “person designated as an official by the international organisation”. If interpretative context is to be provided by the terms of the treaties establishing the various organisations to which the Act is by regulation made applicable, and if (as the Appellant contends and Allsop CJ held) regard should be had to their internal organisational structures, it is relevant that with two

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<sup>37</sup> The Tribunal adopted the language of Rowlatt J (at [35], AB xx) and found that the Respondent’s facts came within that description (at [44]-[52], AB xx-xx). The majority in the Full Court (at [47] and [51], AB xx and xx) also adopted that language and found that on the facts found by the Tribunal the position was an “office” and the Respondent was the “holder of an office.” (Allsop CJ did not address the question.) Those findings are not controverted by any ground of appeal nor by any submission of the Appellant.

<sup>38</sup> (2015) 326 ALR 452, [2015] HCA 44 at [67], citing *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004* (2006) 231 CLR 1 at 15 [34].

<sup>39</sup> IOPI Act, s 5. Section 5A permits an organisation to which Australia is not a party to be declared an “overseas organisation” for the purpose of conferring privileges and immunities on the organisation or those attending conferences organised by it.

<sup>40</sup> The Act also deals with the International Court of Justice and with specific tribunals and organisations, ss 9 - 9D.



exceptions,<sup>41</sup> none of the international organisations to which the Act applies (apart from the UN and its agencies) has either in its treaty or in its organisational structure a mechanism for designating the officials who are to have such entitlements.<sup>42</sup>

5 28. There is no reason to suppose that it was the legislative purpose that the words of entitlement (“person who holds an office”) should have one meaning for the UN and its agencies and another for all the other international organisations to which the Act applies. As used in the legislation,<sup>43</sup> the word “office” has but a single meaning, and that meaning is that ordinarily adopted in Australian law.

10 29. That a single meaning was the legislative purpose is confirmed by the second reading speeches to the Bill for the 1963 Act,<sup>44</sup> which make it clear that the Act was to be of general application (“cover the whole field ... in the one piece of legislation”) and that the criteria were to be those laid down by Parliament, not by the organisations concerned: “clause 6, when read in conjunction with the schedules, proposes that *the Parliament should lay down* very clearly the upper limits, so to speak, of the privileges and immunities which  
15 might be conferred by the regulations”, replacing a system whereby the scope of immunities was in each case determined by the convention to which Australia had acceded, and consequently by the decisions of the international organisation.

(ii) *Legislative history*

20 30. The account in *Macoun v FC of T*<sup>45</sup> of the legislative history of relief from tax afforded by Australia to officials of the UN and its agencies is directed to the issues there in contention<sup>46</sup> and not to the present issue; it was not there disputed that the taxpayer had

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<sup>41</sup> The Customs Co-operation Council and the Organisation for Economic Cooperation and Development: see Part B of the annexed legislation.

<sup>42</sup> Relevant provisions of the regulations made under the 1963 Act conferring privileges and immunities on officers of international organisations, and of the treaties relating to those organisations, are set out in the Part B of the annexure hereto.

<sup>43</sup> Both the IOPI Act and, there being no contrary intention (footnote 26 above) expressed in the UNPI regulations or any of the other regulations, also in each of the regulations made under the Act.

<sup>44</sup> See footnote 21 above; emphasis in quotation added.

<sup>45</sup> (2015) 326 ALR 452; [2015] HCA 44 at [24]-[37].

<sup>46</sup> The issues were whether a former official could claim relief in respect of a pension paid by a retirement fund after he had ceased to hold his office; whether the pension was “salary or emoluments”; and whether the 1947 Convention on the Privileges and Immunities of the Specialized Agencies ([1988] ATS 41) imposed an independent obligation to confer exemption: [2015] HCA 44 at [5] - [8].

been the holder of an office for s 6 purposes. It is other aspects of the legislative history that are presently relevant.

31. The *International Organizations (Privileges and Immunities) Act 1948* (“1948 Act”) and the regulations made under it did not set an independent criterion for entitlement to its protections. Section 5 of the Act authorised the making of regulations to give effect to the 1946 Convention and to “any convention on the privileges and immunities of [an] international organization to which Australia has acceded.” Regulation 3(1) of the *International Organizations (Privileges and Immunities) Regulations of 1959*<sup>47</sup> provided that “a person to whom the Convention<sup>48</sup> applies has, in Australia, the privileges and immunities *applicable under the Convention to ... that person.*”

32. Under the 1948 Act and the 1959 Regulations the Secretary-General of the UN, in accordance with the 1946 Convention, determined who was entitled to the benefit of the Act: by s 17 of Article V of the Convention, “The Secretary-General will specify the categories of officials to which the provisions of this Article ... shall apply” and by s 18 “Officials of the United Nations shall ... (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations.” These provisions, and the Secretary-General’s specification, were given force in Australia by Reg 3(1).

33. Despite the 1963 repeal of the 1948 Act, the 1959 Regulations were given continuing force by s 2 of the 1963 Act.<sup>49</sup> Those regulations, and the decisions of the Secretary-General, remained the source of entitlement for officials of the UN and its agencies until 1986, when the UNPI Regulations were made and the 1959 Regulations repealed.<sup>50</sup>

34. The 1963 Act, and later the 1986 Regulations, effected – and were intended to effect<sup>51</sup> – a clear and fundamental change in the basis of entitlement to privileges and immunities

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<sup>47</sup> SR 20 of 1959 (“the 1959 Regulations”).

<sup>48</sup> Defined in the 1948 Act as the 1946 UN Convention

<sup>49</sup> “Subject to the next succeeding sub-section, regulations made under the Acts repealed by the last preceding sub-section and in force immediately before the commencement of this Act continue in force as if those Acts had not been repealed but regulations so continued in force may be repealed by regulations made under this Act.”

<sup>50</sup> International Organisations (Privileges and Immunities) Regulations (Repeal), SI 1986 No 63.

<sup>51</sup> Second Reading speech to the Bill for the 1963 Act, Hansard, H of R, 8 May 1963, p 1161 (repeated, Hansard, Senate, 21 August 1963, p 95): “... the opportunity should be taken to give the Parliament a greater degree of control over the kind of privileges and immunities which may be conferred. Under the present Act, regulations may be made to give effect to any international convention on the subject to which Australia has acceded. The regulations could, provided that they gave effect to such an international convention, be unlimited in their scope ...”.

of officers. Entitlement no longer rested on the terms of, and decisions of the organisation made under, an international convention, but on the language enacted by Parliament and the regulations made in accordance with that language. It is on the statutory text, not on the terms of a convention nor on a ruling made by an official of an international organisation, that entitlement to privileges and immunities now depends.

35. The context afforded by the legislative history, and the purpose of the 1963 Act and the 1986 Regulations, serves not to direct attention to “how *the organisation itself* structures its affairs and *identifies those who work for it*”<sup>52</sup> as a foundation for an interpretation of the phrase “a person who holds an office” in s 6(1)(d) and Reg 10, but rather to demonstrate that such matters are no longer the source of entitlement and are to be set aside in construing the legislative text. What the legislative history shows is that Australia, by its legislature, has recalled the effective delegation to the Secretary-General of determination of entitlements of UN office holders, and installed an objective test founded on concepts in Australian law.<sup>53</sup>

(iii) *Relevance of the UN Conventions*

36. In introducing the Bill for the 1963 Act, the Attorney General observed that “it is now a recognised feature of international life that international institutions and persons engaged in the work of such institutions may expect to receive a privileged status in any State in which they are operating” and that the 1946 Convention was the “prototype” for the several international conventions dealing with the subject.<sup>54</sup> The structure of the 1963 Act, and the provisions of its schedules, therefore “follow very closely” that of the 1946 Convention.

37. That structural correlation reflects the circumstance that the Act and the 1946 Convention deal with the same subject matter. It does not “assist in the conclusion that one looks to the arrangements and affairs of the UN to decide who is an official of the UN (Article V) or an ‘officer of’ the UN (the Fourth Schedule to the 1963 Act and Reg 10) or ‘holds an

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<sup>52</sup> Allsop CJ at [25], AB xx.

<sup>53</sup> Dealing with the 1947 Convention and the repeal of the 1962 Regulations under the 1948 Act, this Court in *FC of T v Macoun* (2015) 326 ALR 452, [37], said that, following the 1986 repeal and making of the Specialized Agencies (Privileges and Immunities) Regulations, “the IOPI Act and the SAPI Regulations have been the source of any privilege or immunity conferred on officers or former officers of the IBRD.”

<sup>54</sup> Hansard, H of R, 8 May 1963, p 1162; Hansard, Senate, 21 August 1963, p 96. In contrast, the Covenant of the League of Nations ([1920] ATS 1) went no further than in Article 7 to provide that “Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.”

office in' the UN (s 6(1)(d))".<sup>55</sup> To take the 1946 UN Convention as the primary document and construe the 1963 Act to conform with the language of the Convention, as did Allsop CJ, is (notwithstanding his Honour's denial)<sup>56</sup> to fall into the error identified by this Court in *NBGM v Minister for Immigration and Multicultural Affairs*;<sup>57</sup> to do so is

5            "[61] ... to invert the steps which an Australian court should take in situations  
in which international instruments have been referred to in, or adopted  
wholly or in part by, enactments. The first step is to ascertain, with precision,  
what the Australian law is, that is to say what and how much of an  
10            international instrument Australian law requires to be implemented, a  
process which will involve the ascertainment of the extent to which Australian  
law by constitutionally valid enactment adopts, qualifies or modifies the  
instrument. The subsequent step is the construction of so much only of the  
instrument, and any qualifications or modifications of it, as Australian law  
15            requires. The first step is not ... to derive an understanding of the proper  
interpretation and operation of the Convention. ...

[68] It is desirable to say something further, however, about the proper  
approach to the construction of the Act and the Convention. Section 36 of the  
Act must be considered in context. The context is provided by other  
provisions of it. ...

20            [69] The convention does not provide any of the framework for the operation  
of the Act. The contrary is the case. That does not mean that the convention  
in and to the extent of its application to Australia should be narrowly  
construed. It simply means that Australian law is determinative, and it is that  
which should be clearly ascertained before attention is turned to the  
25            convention."<sup>58</sup>

38.        The present is not a case where because "a statute or subordinate legislation is  
ambiguous, the courts should favour that construction which accords with Australia's  
obligations under a treaty or international convention to which Australia is a party."<sup>59</sup>  
Read in the context of the 1963 Act as a whole, and in the context of its legislative history,  
30        the expression "person who holds an office" has a well established meaning, both as a

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<sup>55</sup> Allsop CJ at [25], AB xx.

<sup>56</sup> Allsop CJ at [12], AB xx.

<sup>57</sup> (2006) 231 CLR 52; [2006] HCA 54.

<sup>58</sup> *NBGM v Minister for Immigration and Multicultural Affairs* (2006) 231 CLR 52, 71 [61], 73 [68], [69] (Callinan, Heydon and Crennan JJ; Gummow ACJ agreeing at 55 [1]). See also *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286 at 311-312 [92] (Hayne and Heydon JJ); *Plaintiff M47/2012 v DG of SS* (2012) 251 CLR 1, 24 [11] (French CJ: "In any dispute about the application of an Australian law which gives effect to an international Convention, the first logical step is to ascertain the operation of the Australian law"), 84 [200] (Hayne J: "it is the Act and its text which controls.")

<sup>59</sup> *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 287 (Mason CJ, Deane J; Gaudron J agreeing at 304).

matter of ordinary English and as a matter of authority. That meaning is determinative. It is not displaced by turning attention to the 1946 Convention.

39. Within that meaning the Respondent was the “holder of an office” in the United Nations, and entitled to the benefit of the exemption provided for by the IOPI Act. The appeal should be dismissed.

*(3) The Appellant’s Ruling TD92/153*

40. The Appellant is bound by his ruling in relation to the Respondent, if the ruling applies to him.<sup>60</sup> Relevantly, the ruling<sup>61</sup> is that “the phrase ‘person who holds an office’ in relation to a prescribed organisation covers those people who work as employees for that organisation”, but does not include “persons engaged as experts or consultants”.

41. The natural meaning of the exclusion (“engaged as”) is that the person is engaged only to perform the function of reporting to or advising the organisation in the capacity of an expert or consultant. A person who is engaged only for that purpose does not thereby hold an office or the status of employee. Conversely, an employee who is charged to undertake work requiring expertise is engaged *as* an employee, not *as* an expert. Article VI, s 22 of the 1946 Convention also draws that distinction: it applies only to “experts (*other than* officials...) performing missions” such as “mediation, ... preparing reports, preparing studies, conducting investigations or finding and establishing facts ... peace-keeping [or] technical assistance work.”<sup>62</sup>

42. The Appellant now accepts the approach of the Full Court to the role and interpretation of rulings, including that they are to be read “in an unvarnished way”.<sup>63</sup> A taxpayer whose position falls within the plain or “unvarnished” words of a ruling is entitled to rely on the ruling as binding the Commissioner. For this purpose the taxpayer’s position is determined – whether favourably or unfavourably – according to the actual relationship between the

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<sup>60</sup> Taxation Administration Act 1953, Schedule 1, s 357-60.

<sup>61</sup> The ruling is set out in [53] of the majority judgment below, AB xx.

<sup>62</sup> International Court of Justice, *Advisory Opinion on Applicability of Article VI, section 22*, 15 December 1989, 1989 ICJ Reports 177 at 194 [48].

<sup>63</sup> Pagone and Davies JJ at [55], AB xx, adopted by Allsop CJ at [38], AB xx; AS [50].

parties, in fact and in law, not according to the labels adopted by the parties,<sup>64</sup> nor according to the assertions of either of them.

43. The Tribunal found, and it is now not in contest, that the Respondent worked as an employee for the UN, and that his employment was as project manager, and not as an expert or consultant.<sup>65</sup> On those findings, the Respondent is clearly within the words of the ruling (and in particular is not excluded as a person “engaged as” an expert or consultant).

44. For this separate reason, independently of this Court’s conclusion on the first issue in the appeal, the appeal should be dismissed.

10 (4) The Appellant’s arguments

(a) Construction of the IOPI Act and UNPI Regulations

45. The Appellant’s account of the competing constructions of the Act misstate the arguments on both sides. The Appellant’s contention in this appeal is not that a person holds an office in an organisation “if that organisation has established and designated an office which the person holds”<sup>66</sup> (viz that designation is sufficient) but that the person holds an office *only* if that organisation has established and designated an office which the person holds (viz that designation is necessary).<sup>67</sup> The Respondent does not contend that “whether a person holds an office ... is to be discerned *without* regard to ... the particular arrangements set in place in the international organisation in question.”<sup>68</sup> The facts comprising the “particular arrangements” will determine whether the position is an “office” and whether the person holds it. The label attached to the position by the organisation will not be determinative.

46. The central argument both in the Appellant’s submissions and in the judgment of Allsop CJ is that the “statutory scheme” comprising “different suites of privileges and immunities” in s 6 and the Schedules to the IOPI Act “assumes the existence of some

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<sup>64</sup> *Radaich v Smith* (1959) 101 CLR 209, 214, 219, 222; *Voli v. Inglewood Shire Council* (1963) 110 CLR 74, 90-91; *Stevens v Brodribb Sawmilling Company Pty Ltd* (1986) 160 CLR 16, 24, 36-37; *Wik People v Queensland* (1996) 187 CLR 1, 75-77, 152; *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 at [24].

<sup>65</sup> Reasons at [39], [44-45], [54]. These findings are not contested in any ground of appeal or submission advanced by the Appellant.

<sup>66</sup> AS [14].

<sup>67</sup> A person who is designated by the UN as an official will ordinarily hold an office in the *Bater* sense (para [21] above). Sufficiency of such a designation is not in issue in the appeal; there was no designation.

<sup>68</sup> AS [15].

criterion” to distinguish among those entitled,<sup>69</sup> and that the criterion is to be found in “how the organisation views the person”,<sup>70</sup> a construction which “synchronises the IOPI Act and the UN Convention.”<sup>71</sup>

47. The Respondent accepts that the statutory scheme assumes a criterion for distinguishing the categories of persons entitled to the benefits of the section and the Schedules, but not that the criterion is the designation or label attached to a position by the UN, or is “how the UN views the person”. The criteria is the objective criteria selected by Parliament: the “way in which the relevant organisation has itself chosen to engage personnel” is relevant to whether those criteria are satisfied, but the description of the position given by the UN is not (except where the legislation expressly so states).<sup>72</sup> The duties attached to and permanence of a position are relevant to whether it is an office; the contract of engagement is relevant to whether a person holds the office; but the title attributed to it, and “how the organisation views the person,” are not.
48. The correlation between the structure of the 1963 Act and the 1946 Convention does not support a conclusion that “the holding of an ‘office’ in the UN is a matter that is to be uniquely determined by that organisation”<sup>73</sup> but rather reflects the circumstance that both deal with the same subject matter, the privileges and immunities to be afforded to international organisations and those associated with them. And as the legislative history set out above reveals, the 1963 Act was not enacted solely or principally to give effect to the 1946 and 1947 UN Conventions; to the contrary, the 1963 Act was not made applicable to the UN and its agencies for another 23 years. Giving efficacy in Australia to the UN’s declarations as to who were officials was not the purpose of the 1963 Act; to the contrary, the antecedent scheme of giving such efficacy in the 1948 Act and 1959 Regulations was displaced when, eventually, the 1963 Act was made applicable to the UN and its agencies.
49. In essence, the Appellant’s argument seeks to displace the plain meaning of an Australian statute by invoking as “context” the procedures of one only of the international organisations to which the Act applies. The argument affords to context an undue

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<sup>69</sup> AS [18].

<sup>70</sup> AS [30], quoting Allsop CJ at [16], [25], [30] AB xx, xx, xx.

<sup>71</sup> AS [30].

<sup>72</sup> See for example s 6(1)(b) and Regs 6(1), 7(1) and 8(1) of the UNPI Regulations.

<sup>73</sup> AS [20].

primacy.<sup>74</sup> While context should be considered “in the first instance,”<sup>75</sup> as contributing to “objective discernment” of statutory purpose, “understanding context has utility *if, and in so far as*, it assists in fixing the meaning of the statutory text.”<sup>76</sup> Reference to the 1946 Convention does not assist in fixing, nor does it displace, the meaning of the statutory text. While international treaties establishing organisations to which the Act is made applicable<sup>77</sup> are potentially relevant context in construing the Act and regulations made under it, the terms of s 6 apply to all such organisations and terms in regulations conferring the privileges there provided for will take their meaning from that of the section.<sup>78</sup>

50. The majority did not, as the Appellant asserts, resolve the construction of s 6 and the Regulations “without regard to any consideration of context or purpose at all.”<sup>79</sup> Their Honours at [50] considered, and at [51] rejected, the Appellant’s arguments based on the 1946 Convention, holding not (as the Appellant suggests)<sup>80</sup> that the 1946 Convention is irrelevant to construction of the Act, but that an Australian statutory text which is not ambiguous is not to be read down by reference to a treaty which is not part of Australian law, a proposition well established by decisions of this Court: while an Act must be construed in the light of any recognition of and references to Australia’s international obligations, “first to construe the Convention and then read the Act as if it gives effect to that construction ... inverts the proper order of inquiry. The Act must be construed in the light of its recognition of and references to Australia’s international obligations but it is the Act and its text which controls.”<sup>81</sup>

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<sup>74</sup> The emphatic attention given by Allsop CJ to context, in argument and in judgment, may be attributable to his Honour’s misunderstanding, at [12], of the Respondent’s submission before the Full Court; the Respondent did not submit “that context *cannot* be examined unless some ambiguity is revealed”, but (citing the passage from *Teoh*, at [38] above) that “there is no ambiguity in the text of the section or of the regulation, and *no need* to resort to the UN Charter or the UN Convention for context in order to understand it.” The error is repeated in the Appellant’s submissions at [38].

<sup>75</sup> *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, 408.

<sup>76</sup> *FC of T v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, 519 [39], emphasis added; *Thiess v Collector of Customs* (2014) 250 CLR 664, 671 [22] (French CJ, Hayne, Kiefel, Gageler and Keane JJ).

<sup>77</sup> The Act is made applicable to an organisation by regulations made under s 5. The organisations in respect of which regulations have been made under s 5 and s 6 are listed in the Annexure, Part 2.

<sup>78</sup> Legislation Act 2003, s 13(1)(b). No contrary intention appears in any of the regulations made under the Act, and in particular, no contrary intention appears in the UNPI Regulations.

<sup>79</sup> AS [41].

<sup>80</sup> AS [37].

<sup>81</sup> *Plaintiff M47/2012 v D-G of Social Security* (2012) 251 CLR 1, 84 [200] (Hayne J).



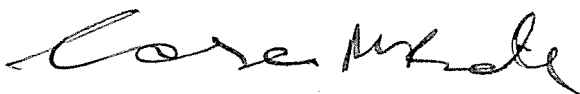
*(b) The Appellant's Ruling*

51. The Appellant's submissions on the Ruling are largely addressed above.<sup>82</sup> The further submission concerning para 3 of the Ruling should also be rejected. The first sentence of that paragraph is a direction to international organisations as to how they should deal with obligations otherwise imposed on an employer,<sup>83</sup> and the balance explicitly states that designation as an office holder is *sufficient* evidence of that status – not as the Appellant now submits that it is *necessary* evidence.

**Part VII – Estimate**

52. The estimate of hours required for the presentation of the Respondent's oral argument is 2 hours.

Dated: 25 January 2017



L B McBride  
Tel 02 9230 3235  
Fax 02 9232 8435  
[lmcbride@wentworthchambers.com.au](mailto:lmcbride@wentworthchambers.com.au)

A H Slater QC  
Tel 02 9230 3232  
Fax 02 9232 8435  
[aslater@aslater.com](mailto:aslater@aslater.com)  
Counsel for the Respondent

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<sup>82</sup> At [40]-[44].

<sup>83</sup> Under the Taxation Administration Act, to withhold tax on remuneration paid in Australia, and under the Fringe Benefits Tax Assessment Act (liability turns on whether a person is a "current employee," viz, is in receipt of "salary or wages," defined to mean payments from which tax must be withheld, s 136).

COMMISSIONER OF TAXATION V JAYASINGHE

ANNEXURE TO RESPONDENT'S SUBMISSIONS

5

PART A – LEGISLATION AND REGULATIONS

**International Organizations (Privileges and Immunities) Act 1948 (No 72 of 1948)**

2. In this Act, "the Convention " means the General Convention on the Privileges and Immunities of the United Nations which was adopted by the General Assembly of the United Nations on the thirteenth day of February, One thousand nine hundred and forty-six, and a copy of which is set out in the Schedule to this Act.
- 5 The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act, and in particular –
- 15 (a) for giving effect to the provisions of the Convention; and  
(b) for giving effect, in relation to any international organization, to the provisions of any convention on the privileges and immunities of that international organization to which Australia has acceded.
- 20

**International Organizations (Privileges and Immunities) Regulations 1959 (SR 20 of 1959)**

- 3 (1.) The United Nations or a person in relation to whom the Convention applies has, in Australia, the privileges and immunities applicable under the Convention to the United Nations or that person, as the case may be.
- 25 (2.) Where any Act, other than the International Organizations (Privileges and Immunities) Act 1948, makes provision in relation to privileges and immunities of the United Nations or a person in relation to whom the Convention applies, the last preceding sub-regulation does not confer any privileges or immunities in relation to matters arising under that first-mentioned Act.
- 30

**International Organizations (Privileges and Immunities of Specialized Agencies) Regulations 1962 (SR 105 of 1062)**

- 35 2. In these Regulations, unless the contrary intention appears "the Convention" means the Convention, as modified by the Annexes, set forth in the Schedule to these Regulations.
- 40 4 (1.) Each Specialized Agency and each person in relation to whom the Convention applies has, in Australia, the privileges and immunities applicable under the Convention (other than those referred to in section 11 of the Convention) to that specialized agency or that person, as the case may be.



PART B – IOPI REGULATIONS AND RELATED TREATIES

[Regulations made under the 1963 Act, dealing with privileges of officers, are listed in the order made, in each case followed by the name and citation of the treaty compliance with which is effected by the making of the regulation. Where the treaty or an associated document makes provision for the specification of the officers to which the treaty obligations apply, relevant provisions of the treaty are set out. Where no provision is set out, the treaty is silent on the subject.]

**South East Asia Treaty Organization (Privileges and Immunities) Regulations (SR 50 / 1967)**  
**[Southeast Asia Collective Defense Treaty [SEATO], and Protocol [1955] ATS 3]**

- 8 (1.) A person who holds an office in the Organization, other than the office of Secretary-General of the Organization, has
- (a) the privileges and immunities specified in paragraphs 1, 2, 3, 4 and 5 of Part I. of the Fourth Schedule to the Act; and
  - (b) the following privileges, namely, the like repatriation facilities (including repatriation facilities for a spouse and any dependent relatives) in time of international crisis as are accorded to an official of comparable rank, forming part of a diplomatic mission.

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**International Court of Justice (Privileges and Immunities) Regulations (SR 80 / 1967)**  
**[Statute of the International Court of Justice [1975] ATS 50]**

- Privileges and immunities of officers of Court other than the Registrar*
- (1) A person who holds an office in the Court, other than the office of Registrar, has, while on the business of the Court or while on a journey in connexion with the performance of the functions of his office:
- (a) the privileges and immunities specified in paragraphs 1 to 5 (inclusive) of Part I of the Fourth Schedule to the Act; and
  - (b) the following privileges, namely, the like repatriation facilities (including repatriation facilities for a spouse and any dependent relatives) in time of international crisis as are accorded to an official of comparable rank forming part of a diplomatic mission.

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**Asian Development Bank (Privileges and Immunities) Regulations (SR 175 / 1967)**  
**[Agreement establishing the Asian Development Bank [1966] ATS 13]**

- 2 In these Regulations
- MOU:*
- (a) means the document entitled 'Arrangement between the Government of Australia and the Asian Development Bank regarding the Pacific Liaison and

Coordination Office of the Asian Development Bank', a copy of which is set out in Part 1 of Schedule 3; and

- (b) includes the Agreed Minutes relating to the document, a copy of which is set out in Part 2 of Schedule 3.

5

6 Privileges and immunities of officers of Bank other than President

- (1) A person who holds an office in the Bank has such of the privileges and immunities specified in Part I of the Fourth Schedule to the Act as are required by the Agreement and the MOU to be conferred on a person who holds that office.

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*Schedule 3 – [MOU]*

1.1 (j) "Office" means the Pacific Liaison and Coordination Office of ADB

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(k) The term "Officers of ADB" means for the purpose of this Arrangement and consistent with Article 55 of the Charter all officers and employees of ADB and does not include persons locally engaged by ADB on an hourly rate.

(l) "Officers of the Office" means for the purpose of this Arrangement and consistent with Article 55 of the Charter, all Officers of ADB appointed by ADB to the Office;

20

12.1 Governors, Directors, alternates, and Officers of ADB and the Office, will enjoy within and with respect to Australia the following privileges and immunities: ...

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25

**European Launcher Development Organisation (Privileges and Immunities) Regulations. (SR 158 / 1968) (no longer in force)**

**[Protocol on Privileges and Immunities of the European Launcher Development Organisation, and Protocol of Signature [1967] ATS 29]**

30

3. In these Regulations, unless the contrary intention appears –  
"the Protocol" means the Protocol on the Privileges and Immunities of the Organization, being the Protocol a copy of which is set out in the First Schedule to these Regulations.

35

8.(1.) Subject to the next succeeding sub-regulation, a person who holds an office in the Organization, other than a person who holds, or is performing the duties of, the office of Secretary-General of the Organization, has such of the privileges and immunities specified in Part I. of the Fourth Schedule to the Act as are required by the Protocol to be conferred on him.

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*First Schedule - Protocol on Privileges and Immunities of the European Organisation for the Development and Construction of Space Vehicle Launchers.*

Article 18

45

(1) Subject to the conditions and following the procedure laid down by the Council, within a period of one year from the date of the entry into force of the Convention, the Secretary-General and the staff members of the Organisation shall be subject to a tax, for the benefit of the Organisation, on salaries and emoluments paid by the

Organisation. From the date on which this tax is applied such salaries and emoluments shall be exempt from national income tax; but the Member States shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

5 Article 19

The Council shall decide the categories of staff members to whom the provisions of Article 16, in whole or in part, and Article 18 shall apply and the categories of experts to whom the provisions of Article 17 shall apply.

10

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**Cultural and Social Centre for the Asian and Pacific Region (Privileges and Immunities) Regulations (SR 104 / 1969) (no longer in force)**

15

**[Agreement establishing a Cultural and Social Centre for the Asian and Pacific Region [1968] ATS 19]**

6 (1.) Subject to the next succeeding sub-regulation, a person who holds an office in the Centre has the privileges and immunities specified in paragraphs 1, 2, 3, 5 and 6 of Part I. of the Fourth Schedule to the Act.

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**International Atomic Energy Agency (Privileges and Immunities) Regulations (SR 30 / 1971) [Agreement on the Privileges and Immunities of the International Atomic Energy Agency [1986] ATS 10]**

25

8 *Privileges and immunities of officers (other than high officers) of the Agency*

(1) A person who holds an office in the Agency, other than a person who holds, or is performing the duties of, an office specified in subregulation 6 (1), has the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

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**South Pacific Commission (Privileges and Immunities) Regulations (SR 171 / 1970) [Agreement establishing the South Pacific Commission [1948] ATS 15]**

35

8 *Privileges and immunities of officers of Commission other than high officers*

(1) Subject to the next two succeeding subregulations, a person who holds an office in the Commission, other than a person who holds, or who is performing the duties of, an office specified in subregulation (1) of regulation 6 of these Regulations, has the privileges and immunities specified in paragraphs 1, 2, 3, 5, 6 and 7 of Part I of the Fourth Schedule to the Act.

40

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**Privileges and Immunities (Organizations Associated with the Asian and Pacific Council) Regulations (SR 52 / 1972) (no longer in force)**

[Agreement establishing a Cultural and Social Centre for the Asian and Pacific Region [1968] ATS 19; Agreement establishing an Economic Co-operation Centre for the Asian and Pacific Region [1970] ATS 12; Agreement establishing a Registry of Scientific and Technical Services for the Asian and Pacific Region [1971] ATS 15]

3. In these Regulations, unless the contrary intention appears –  
“prescribed organization” means –

- (a) the Cultural and Social Centre for the Asian and Pacific Region established by an Agreement between the members of the Asian and Pacific Council dated the first day of August, 1968;
- (b) the Economic Co-operation Centre for the Asian and Pacific Region established by an Agreement between the members of the Asian and Pacific Council dated the nineteenth day of June, 1970;
- (c) the Food and Fertilizer Technology Centre for the Asian and Pacific Region established by an Agreement between the members of the Asian and Pacific Council dated the eleventh day of June, 1969; and
- (d) the Registry of Scientific and Technical Services; ...

8(1.) Subject to the next two succeeding sub-regulations and to the next succeeding regulation, a person who holds an office in a prescribed organization has the privileges and immunities specified in paragraphs 1, 2, 3 and 5 of Part I. of the Fourth Schedule to the Act.

\*\*\*

**Commonwealth Secretariat (Privileges and Immunities) Regulations (SR 175 / 1972)**

*Privileges and immunities of officers other than high officers of the Commonwealth Secretariat*

(1) Subject to subregulations (2), (3) and (5) of this regulation, a person who holds an office in the Commonwealth Secretariat, other than a person who holds a high office in the Commonwealth Secretariat, has the privileges and immunities specified in paragraphs 1 and 2 of Part I of the Fourth Schedule to the Act.

\*\*\*

**South Pacific Bureau for Economic Cooperation (Privileges and Immunities) Regulations (SR 114 / 1973) (no longer in force)**

[South Pacific Regional Trade and Economic Cooperation Agreement [SPARTECA] [1982] ATS 31]

9 (1) Subject to sub-regulations (2) and (3), a person who holds an office in the Bureau, other than a person who holds, or is performing the duties of, the office of Director of the Bureau, has the privileges and immunities specified in items 1, 2 and 7 of Part I of the Fourth Schedule to the Act.

\*\*\*

**International Bauxite Association (Privileges and Immunities) Regulations (SR 251 / 1976) (no longer in force)**

**[Agreement establishing the International Bauxite Association [IBA] [1975] ATS 38]**

- 5 8. (l) Subject to sub-regulation (2), a person who holds an office in the Association, other than a person who holds, or is performing the duties of, the office of Secretary-General of the Association, has the privileges and immunities specified in paragraphs 1, 2, 3, 4, 5 and 6 of Part I of the Fourth Schedule to the Act.

10 \*\*\*

**Customs Co-operation Council (Privileges and Immunities) Regulations (SR 72 / 1979)**

**[Convention establishing a Customs Co-operation Council [CCC] [1961] ATS 1]**

9 *Privileges and immunities of other officials of the Council*

- 15 (1) Subject to subregulation (2), a person who holds an office in the Council (not being the office of Secretary General or Deputy Secretary General of the Council) has the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

*Annex to the Convention establishing a Customs Co-operation Council*

20 Article VI

16 The Council will specify the categories of officials to which this Article shall apply. The Secretary General shall communicate to the Members of the Council the names of the officials included in these categories.

17 Officials of the Council shall:

- 25 (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limits of their authority;
- (b) be exempt from taxation in respect of the salaries and emoluments paid to them by the Council;
- 30 (c) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (d) be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
- 35 (e) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
- (f) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question, and to return such furniture and effects free of duty to their country of domicile on the termination of their
- 40 functions.

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**International Tin Council (Privileges and Immunities) Regulations (SR 155 / 1982) (no longer in force)**

**[Sixth International Tin Agreement [1982] ATS 27]**

5. A person who –

(a) is a resident of Australia within the meaning of the Income Tax Assessment Act 1936; and

(b) holds an office in the Organization that is an office to which paragraph 6(1) (d) of the Act applies,

shall, on so much of the salaries and emoluments received by him from the Organization as are in respect of the performance outside Australia of the duties of his office, be exempt from taxation.

\*\*\*

**Organisation for Economic Co-operation and Development (Privileges and Immunities) Regulations (SR 7 / 1983)**

**[Agreement between the Government of Australia and the Organisation for Economic Co-operation and Development on Privileges and Immunities of the Organisation in Australia, and Exchange of Notes [1983] ATS 5]**

*Privileges and immunities of officers (other than high officers) of the Organisation*

(1) Subject to subregulations (2) and (3), a person who holds an office in the Organisation, other than a person who holds, or is performing the duties of, an office specified in subregulation 6 (1) or 7 (1), has the privileges and immunities specified in paragraphs 1, 2, 3, 5, 6 and 7 of Part I of the Fourth Schedule to the Act.

*Agreement, [1983] ATS 5:*

Article 6

The categories of officials to which the provisions of this Article apply are those specified by the Secretary-General and submitted to the Council of the Organisation for approval. The names of the officials included in these categories shall from time to time be made known to the Government of Australia.

Officials of the Organisation shall enjoy the following privileges, immunities, exemptions and facilities. ...

\*\*\*

**Commission for the Conservation of Antarctic Marine Living Resources (Privileges and Immunities) Regulations (SR 22 / 1983)**

**[Convention on the Conservation of Antarctic Marine Living Resources [1982] ATS 9; Headquarters Agreement between the Government of Australia and the Commission for the Conservation of Antarctic Marine Living Resources [1986] ATS 21]**

*Privileges and immunities of officers of the Commission*

(1) Subject to sub-regulations (2), (5) and (6), a person who holds an office in the Commission has the privileges and immunities specified in paragraphs 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

\*\*\*

World Tourism Organisation (Privileges and Immunities) Regulations (SR 276 / 1984) (no longer in force)

[World Tourism Organization (WTO) Statutes [re-joining] (Mexico City, 27 September 1970) [1979] ATS 15]

8 (1) A person who holds an office in the Organisation, other than a person who holds, or is performing the duties of, the office specified in sub-regulation 6(1), has the immunities specified in paragraph 1 of Part I of the Fourth Schedule to the Act.

\*\*\*

Common Fund for Commodities (Privileges and Immunities) Regulations (SR 20 / 1985) (no longer in force)

[Agreement establishing the Common Fund for Commodities [1989] ATS 16]

8.(1) Subject to sub-regulation (2), a person who holds an office in the Fund has the privileges and immunities specified in paragraphs 1, 2, 3, 4 and 5 of Part I of the Fourth Schedule to the Act.

\*\*\*

Specialized Agencies (Privileges and Immunities) Regulations (SR 67 / 1986)

[Convention on the Privileges and Immunities of the Specialized Agencies (21 November 1947, New York) [1988] ATS 41]

2 In these Regulations:  
*Specialized Agency* means an agency specified in column 2 of an item in the Schedule.

8 (1) *Privileges and immunities of officers (other than high officers) of Specialized Agencies*  
Subject to subregulation (2), a person who holds an office in a Specialized Agency, other than a person who holds, or is performing the duties of, an office specified in Column 3 of an item in the Schedule, has the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

*Schedule, Column 2:*

International Labour Organisation  
Food and Agriculture Organization of the United Nations  
International Civil Aviation Organization  
United Nations Educational, Scientific and Cultural Organization  
International Monetary Fund  
International Bank for Reconstruction and Development  
World Health Organization  
Universal Postal Union  
International Telecommunication Union  
World Meteorological Organization

International Maritime Organization  
International Finance Corporation  
International Development Association  
World Intellectual Property Organization  
5 International Fund for Agricultural Development  
United Nations Industrial Development Organization

*Specialized Agencies Convention [1988] ATS 41*

10 Article VI - Officials

18 Each specialized agency will specify the categories of officials to which the provisions of  
this article and of article VIII shall apply. It shall communicate them to the Governments  
of all States parties to this Convention in respect of that agency and to the Secretary-  
15 General of the United Nations. The names of the officials included in these categories  
shall from time to time be made known to the above-mentioned Governments.

19 Officials of the specialized agencies shall: ... [enjoy the privileges and immunities  
specified in sections 19-21]

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**Intergovernmental Committee for Migration (Privileges and Immunities) Regulations (SR 69 /  
1986) (no longer in force)**

25 [Constitution of the Intergovernmental Committee for European Migration [1954] ATS  
24]

6. (1) Subject to sub-regulation (2), a person who holds an office in the Committee has the  
privileges and immunities specified in paragraph 2 of the Fourth Schedule to the Act.

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**Australia-Indonesia Zone of Cooperation (Privileges and Immunities) Regulations (SR 228 /  
1990) (no longer in force)**

35 [Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in  
an Area between the Indonesian Province of East Timor and Northern Australia [Timor  
Gap Treaty] [1991] ATS 9]

6 *Privileges of officers of the Joint Authority*

(1) Subject to sub-regulation (2), a person who holds an office in the Joint Authority and is  
not a resident of Australia within the meaning of Article 1 of the Treaty has the privileges  
and immunities specified in paragraphs 2 and 7 of Part I of the Fourth Schedule to the  
40 Act.

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**International Centre for Settlement of Investment Disputes (Privileges and Immunities) Regulations (SR 42 / 1991)**

**[Convention on the Settlement of Investment Disputes between States and Nationals of other States [ICSID] [1991] ATS 23]**

- 5 3 In these Regulations, unless the contrary intention appears: ...  
*officer* means a person, other than a Council member, who holds an office in the Secretariat.
- 7 *Immunity from suit and other legal process: Council members and officers*  
10 A person who is a Council member or an officer has the immunity specified in paragraph 1 of Part 1 of the Fourth Schedule to the Act.
- 8 *Other privileges and immunities of Council members and officers*  
15 (1) This regulation applies only to persons who are not Australian citizens.  
(2) A Council member is exempt from taxation on emoluments (other than salary) received from the Centre.  
(3) An officer is exempt from taxation on salary and other emoluments received from the Centre.

20 \*\*\*

**International Organization for Migration (Privileges and Immunities) Regulations (SR 457 / 1991)**

25 **[Amendments to the Constitution of Intergovernmental Committee on European Migration of 19 October 1953 [Reconstituted as the International Organization for Migration] [1989] ATS 35]**

- 6 *Privileges and immunities of the officers and former officers of the Organisation*  
(1) Subject to subregulation (3), a person who holds an office in the Organisation has the privileges and immunities set out in paragraphs 1, 2, 3, 4, 5 and 6 of Part I of the Fourth  
30 Schedule to the Act.

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**South Pacific Forum Secretariat (Privileges and Immunities) Regulations (SR 162 / 1992)**

35 **[Agreement establishing the South Pacific Forum Secretariat [1993] ATS 16]**

- 2 In these Regulations, unless the contrary intention appears:  
*office* means an office in the Secretariat.

- 8 *Privileges and immunities of certain Secretariat officers*  
40 (1) Subject to subregulations (2) and (3), a person who holds, or is performing the duties of, an office (other than the office of Secretary General) has the privileges and immunities stated in items 1, 2 and 7 in Part I in the Fourth Schedule to the Act.

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**European Bank for Reconstruction and Development (Privileges and Immunities) Regulations (SR 110 / 1992)**

**Agreement establishing the European Bank for Reconstruction and Development [EBRD] [1991] ATS 15**

- 5 6 *Privileges and immunities of certain officeholders, officers and employees of the Bank*  
(1) Subject to subregulations (2), (3) and (4), a person who:  
(a) holds the office of Governor, Director or Alternate in the Bank; or  
(b) is another officer or employee of the Bank; has the privileges and immunities specified in paragraphs 1, 2, 3, 4 5, and 6 of Part I of the Fourth Schedule to the Act.

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**World Trade Organization (Privileges and Immunities) Regulations (SR 24 / 1996)**

15 **[Marrakesh Agreement establishing the World Trade Organization (WTO Agreement) [1995] ATS 8]**

- 2 In these Regulations:  
*office* means an office of the WTO.

- 20 8 *Privileges and immunities of certain WTO officers*  
(1) Subject to subregulations (2) and (3), a person who holds, or is performing the duties of, an office (other than the office of Director-General) has the privileges and immunities stated in items 1, 2, 3, 5, 6 and 7 in Part I of the Fourth Schedule to the Act.

25 \*\*\*

**Commission for the Conservation of Southern Bluefin Tuna (Privileges and Immunities) Regulations (SR 40 / 1996)**

30 **[Convention for the Conservation of Southern Bluefin Tuna [1994] ATS 16; Headquarters Agreement between the Government of Australia and the Commission for the Conservation of Southern Bluefin Tuna [1999] ATS 6]**

- 11 *Privileges and immunities of officers of Commission*  
(1) Subject to subregulations (2), (6) and (7), a person who holds an office in the Commission (other than the office of Executive Secretary) has the privileges and immunities specified in paragraphs 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

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**South Pacific Regional Environmental Programme (Privileges and Immunities) Regulations (SR 144 / 1996)**

**[Agreement establishing the South Pacific Regional Environment Programme (SPREP) [as an intergovernmental organisation] [1995] ATS 24]**

- 5 9 *Privileges and immunities of certain officers of the organisation*  
(1) Subject to subregulations (2) and (3), a person who holds, or is performing the duties of, an office (other than the office of Director) has the privileges and immunities set out in items 1, 2, 3, 5, 6 and 7 in Part I of the Fourth Schedule to the Act.

10 \*\*\*

**International Institute for Democracy and Electoral Assistance (Privileges and Immunities) Regulations (SR 197 / 1996) (no longer in force)**

15 **[Agreement establishing the International Institute for Democracy and Electoral Assistance [International IDEA] [1997] ATS 16]**

- 9 (1) Subject to sub-regulations (2), (6) and (7), a person who holds an office in the Institute (other than the office of Secretary General) has the privileges and immunities specified in items 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

20 \*\*\*

**International Sea-Bed Authority (Privileges and Immunities) Regulations (SR 229 / 1996) [United Nations Convention on the Law of the Sea [1994] ATS 31]**

- 8 *Privileges and immunities of officers of Authority*  
25 (1) Subject to subregulations (2), (6) and (7), a person who holds an office in the Authority, including the Secretary-General of the Authority, has the privileges and immunities specified in items 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

30 \*\*\*

**Energy Charter Conference (Privileges and Immunities) Regulations (SR 329 / 1997) [The Energy Charter Treaty (17 December 1994, Lisbon) (not yet in force)]**

- 2 In these Regulations  
*office* means an office in the Charter Conference.

- 35 8 *Privileges and immunities of certain Charter Conference officers*  
(1) A person who holds, or is performing the duties of, an office (other than the office of Secretary-General) has the privileges and immunities stated in items 1, 2, 3, 5, 6 and 7 in Part I of the Fourth Schedule to the Act.

40 \*\*\*

**International Hydrographic Organization (Privileges and Immunities) Regulations (SR 330 / 1997)**

**[Convention on the International Hydrographic Organization [1970] ATS 19]**

8 *Privileges and immunities of officers of Organisation*

- 5 (1) Subject to subregulations (2), (4) and (5), a person who holds an office in the Organisation, other than the office of a member of the Directing Committee, has the privileges and immunities specified in items 1, 2, 3, 6 and 7 of Part I of the Fourth Schedule to the Act.

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**International Institute for Democracy and Electoral Assistance (Privileges and Immunities) Regulations (SR 331 / 1997)**

15 **[Agreement establishing the International Institute for Democracy and Electoral Assistance [International IDEA] [1997] ATS 16]**

8 *Privileges and immunities of officers of the Institute*

- (1) Subject to subregulations (2), (6) and (7), a person who holds an office in the Institute (other than the office of Secretary- General) has the privileges and immunities specified in paragraphs 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

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**Network of Aquaculture Centres in Asia and the Pacific (Privileges and Immunities) Regulations (SR 66 / 1998)**

25 **[Agreement on the Network of Aquaculture Centres in Asia and the Pacific, as amended [1998] ATS 19]**

9 *Privileges and immunities of officers of the Organisation*

- (1) A person who holds an office in the Organisation (other than the office of Coordinator) has the privileges and immunities mentioned in Part I of the Fourth Schedule to the Act.

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**Multilateral Investment Guarantee Agency (Privileges and Immunities) Regulations (SU 135 / 1998)**

35 **[Convention establishing the Multilateral Investment Guarantee Agency [MIGA] [1998] ATS 24]**

9 *Privileges and immunities of officers of the Agency*

- (1) Subject to subregulations (2) and (6), a person who holds an office in the Agency (other than the office of President) has the privileges and immunities specified in items 1, 2 and 3 of Part I of the Fourth Schedule to the Act.

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**Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization  
(Privileges and Immunities) Regulations (SR 84 / 2000)  
[Comprehensive Nuclear□Test□Ban Treaty Act 1998, Sch 1]**

9 Privileges and immunities of PrepCom officers

- 5 (1) A person who holds an office in PrepCom, other than a high office, has the privileges and immunities specified in items 1 to 6 (inclusive) in Part I of the Fourth Schedule to the Act.

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10 **International Tribunal for the Law of the Sea (Privileges and Immunities) Regulations (SR 283 / 2000)**

**[United Nations Convention on the Law of the Sea [1994] ATS 31]**

3 In these Regulations:

- 15 "official of the Tribunal" includes the Registrar of the Tribunal and the other members of the staff of the Registry.

21 *Privileges and immunities of officials of the Tribunal*

- (2) An official of the Tribunal (other than the Registrar of the Tribunal) has, when engaged on the business of the Tribunal, the following privileges and immunities: ...

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**International Development Law Organization (Privileges and Immunities) Regulations (SLI 85 / 2007)**

25 **[Agreement for the Establishment of the International Development Law Organization (IDLO) (Rome, 5 February 1988) - [2000] ATS 23]**

9 *Privileges and immunities of Asia Regional Representative, Director and staff members*

- (1) Subject to subregulation (5), a person mentioned in subregulation (3) who is not a citizen or permanent resident of Australia has the following privileges and immunities:

- 30 (a) the privileges and immunities specified in Part I of the Fourth Schedule to the Act, other than items 2 and 3 of that Part;  
(b) exemption for himself or herself, and his or her spouse, from the application of laws relating to the registration of aliens.

- (2) Subject to subregulations (5) and (6), a person mentioned in subregulation (3) who is a citizen or permanent resident of Australia has the following privileges and immunities:

- 35 (a) the privileges and immunities mentioned in items 1, 4 and 6 of Part I of the Fourth Schedule to the Act;  
(b) exemption for himself or herself, and his or her spouse, from the application of laws relating to the registration of aliens.

- 40 (3) The persons are:

- (a) the Asia Regional Representative; and  
(b) the Director; and  
(c) members of the staff of the IDLO's Asia Pacific Regional Center.

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**Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations (SLI 233 / 2008)**

**[Agreement on the Conservation of Albatrosses and Petrels [2004] ATS 5;  
Headquarters Agreement Between the Government of Australia and the Secretariat to  
the Agreement on the Conservation of Albatrosses and Petrels [2008] ATS 19]**

*Privileges and immunities of staff members of Secretariat*

(1) Subject to subregulations (2), (3), (4) and (7), a person who:

(a) is employed in the Secretariat; and

(b) is not an Australian citizen or a permanent resident of Australia;

has the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

(6) Subject to subregulation (7), a person who:

(a) holds, or has held, an office in the Secretariat (including the office of Executive Secretary); and

(b) is an Australian citizen or a permanent resident of Australia;

has the privileges and immunities specified in:

(c) subregulation (5); and

(d) paragraph 1 of Part I of the Fourth Schedule of the Act.

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**Asian Infrastructure Investment Bank (Privileges and Immunities) Regulation (SLI 175 / 2015)**

**[Articles of Agreement for the Asian Infrastructure Investment Bank [2015] ATS 16]**

*Privileges and immunities of officers and employees of the Bank etc.*

(1) The following persons have the privileges and immunities specified in clause 1 of Schedule 2:

...

(f) other officers and employees of the Bank;

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