

IV. Jurisdiction

Vienna Convention on Diplomatic Relations — Administrative and Technical Staff — Immunity from Civil Jurisdiction of Receiving State

During 1994 and 1995, a member of the administrative and technical staff of the Canadian High Commission was involved in a matter before the Family Law Court of Australia. In a Note to the Canadian High Commission dated 13 January 1995, the Department of Foreign Affairs and Trade outlined its interpretation of the immunities enjoyed by such staff in Australia under the Vienna Convention on Diplomatic Relations (VCDR). Article 37(2) of the Convention provides that members of the administrative and technical staff shall enjoy immunity from the civil jurisdiction of the courts, as specified by Article 31(1), except in relation to “acts performed outside the course of their duties”.

An extract of text of the Note follows:

The Diplomatic Privileges and Immunities Act 1967 implements the majority of the provisions of the VCDR into Australian domestic legislation including Article 37(2). This Act further clarifies the limitation on immunities accorded to administrative and domestic staff. Section 11(a) of the Act states: “In respect of *acts performed in the course of their duties*” members of the administrative and domestic staff are entitled to the immunity from jurisdiction to which diplomatic agents are entitled.

Given that a member of the administrative and technical staff of a mission is defined in terms of the administrative and technical services he or she performs, it follows that immunity is accorded *only in respect of acts performed in the course of those administrative and technical services*. This is the interpretation espoused by the Australian domestic counterpart to the VCDR.

On the basis of the above provisions contained in the VCDR and the Diplomatic Privileges and Immunities Act, the Department confirms that [the employee], as a member of the administrative and technical staff of the Canadian High Commission, is entitled to immunity from the civil jurisdiction of the courts only in respect of those acts performed in the course of his administrative and technical duties. The Australian interpretation of the VCDR would not extend immunity to matters such as marital status and custodial relationships.

Sex Offences Committed Overseas — Obtaining Evidence

On 20 November 1995, the report of the Parliamentary Joint Committee on the National Crime Authority entitled *Organised Criminal Paedophile Activity* was tabled in the Senate (Senate, *Debates*, vol 175, p 3309). The following recommendations were amongst those made in the report:

- (v) the Government takes steps to improve the arrangements between the Thai Police and the Australian Federal Police with a view to improving the detection and prosecution of Australian child sex tourists ...

(vii) the Government seek treaty relationships with the Cambodian and other South-East Asian Governments to assist in the detection and obtaining of evidence to enable the prosecution of Australians committing child-sex offences in those countries.

International Transfer of Prisoners — Possibility of Australian Scheme

On 11 May 1995, in the House of Representatives, the Attorney-General, Mr Lavarch, answered a question upon notice from Mr Melham (Banks, ALP). Extracts from the text of the question and answer follow (House of Representatives, *Debates*, vol 201, p 408):

Mr Melham—asked the Attorney-General, upon notice, on 8 February 1995:

- (1) What items on human rights were placed on the agenda of the Standing Committee of Attorneys-General in Hobart on 3 February 1995.
- (2) Who placed each item referred to in part (1) on the agenda and what was the outcome.

Mr Lavarch—The answer to the honourable member's question is as follows:

- (1) The Commonwealth's written report placed before the meeting of the Standing Committee of Attorneys-General on 3 February 1995 referred to a number of human rights issues. These included: ...

International Transfer of Prisoners;

- (2) ... The agenda item dealing with the international transfer of prisoners was originally placed on the agenda by the Northern Territory ... In relation to the International Transfer of Prisoners item, the Commonwealth, States and the Australian Capital Territory have reached agreement to proceed with an international transfer of prisoners scheme. Model legislation is being prepared by the Parliamentary Counsel's Committee for consideration by the Standing Committee.