



MINISTER FOR FOREIGN AFFAIRS

Departmental No. 74

Minute Paper for the Executive Council

Executive Council Meeting No. 29

Subject

International Organisations (Privileges and Immunities) Act 1963

International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015

Approved in Council

Recommended for the approval of His Excellency the Governor-General in Council that he make a Regulation in the attached form.

Peter Cosgrove
Governor-General

10 DEC 2015

Filed in the Records
of the Council

Julie Bishop
Minister for Foreign Affairs

Secretary to the Executive Council

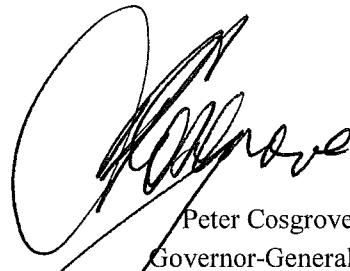


International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015

Select Legislative Instrument No. , 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated *10th December* 2015



Peter Cosgrove
Governor-General

By His Excellency's Command



Julie Bishop
Minister for Foreign Affairs

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1 Name

This is the *International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *International Organisations (Privileges and Immunities) Act 1963*.

4 Definitions

In this instrument:

Act means the *International Organisations (Privileges and Immunities) Act 1963*.

Section 5

Fund means the Intergenerational Trust Fund for the People of the Republic of Nauru.

5 Act applies to Fund

The Fund is declared to be an international organisation to which the Act applies.

6 Legal personality and capacities of Fund

For subparagraph 6(1)(a)(i) of the Act, the Fund is a body corporate with perpetual succession and has the legal capacity to:

- (a) enter into contracts; and
- (b) acquire and dispose of property; and
- (c) institute legal proceedings; and
- (d) take other action to protect the assets of the Fund.

7 Privileges and immunities of Fund

For subparagraph 6(1)(a)(ii) of the Act, the Fund has the following privileges and immunities:

- (a) exemption from currency and exchange restrictions;
- (b) exemption of the Fund, its property and its assets from income tax.

EXPLANATORY MEMORANDUM

Minute No. 74 of 2015 - Minister for Foreign Affairs

Subject - *International Organisations (Privileges and Immunities) Act 1963*
International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015

The *International Organisations (Privileges and Immunities) Act 1963* (“the Act”) provides for the conferral of certain privileges and immunities on international organisations for the purposes of Australian law.

Section 13 of the “the Act” permits the Governor-General to make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 5(1) of the Act provides that the regulations may declare an organisation of which Australia and a country or countries other than Australia are members, or that is constituted by a person or persons representing Australia and a person or persons representing a country or countries other than Australia, to be an international organisation to which the Act applies.

The purpose of the proposed Regulation is to declare the Intergenerational Trust Fund for the People of the Republic of Nauru (“the Fund”), established in accordance with the Memorandum of Understanding between the Government of the Republic of Nauru and the Government of Australia (“the MoU”), to be an international organisation to which the Act applies.

The Governments of the Republic of Nauru and Australia entered into the MoU on 6 November 2015. Under that MoU, the Government of Nauru will, in consultation with Australia, establish the Fund. The Fund will be governed by a Committee comprising one member representing Australia and one representing Nauru.

The purpose of the Fund is to provide a source of revenue to the Republic of Nauru post-2033, for investments in education, health, environment and infrastructure. The Fund will help to smooth out windfall income streams in the medium term and replace all or part or supplement questionable future revenue. The MoU provides for both governments to make annual contributions to the Fund.

Under the terms of the MoU, the Fund is to be provided with legal personality under Australian law, and the capacity to take particular actions in respect of the assets of the Fund (for example, acquiring property and entering into contracts). The MoU also requires the Fund to be exempt from certain regulations and taxes. The proposed Regulation would confer the agreed status and immunities on the Fund.

Details of the proposed Regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulation would commence on the day after it is registered.

The Minute recommends that the Regulation be made in the form proposed.

Authority: Section 13 of the *International Organisations
(Privileges and Immunities) Act 1963*

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ATTACHMENT

Details of the proposed *International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015*

Section 1 – Name of Regulation

This section would provide that the title of the Regulation is the *International Organisations (Privileges and Immunities—Nauru Trust Fund) Regulation 2015*.

Section 2 – Commencement

This section would provide for the Regulation to commence on the day after it is registered.

Section 3 – Authority

This section would provide that the Regulation is made under the *International Organisations (Privileges and Immunities) Act 1963*.

Section 4 – Definitions

This section would define “Act” and “Fund” for the purposes of the Regulation.

Section 5 – Act applies to Fund

This section would provide that the Fund is declared to be an international organisation to which the Act applies.

Section 6 – Legal personality and capacities of Fund

Section 6(1)(a)(i) of the Act provides that the regulations may confer upon an international organisation to which the Act applies ‘juridical personality and such legal capacities as are necessary for the exercise of the powers and the performance of the functions of the organisation’.

For this purpose, section 6 of the proposed Regulation would confer the legal personality and capacities necessary for the Fund to exercise its powers and perform its functions under the MoU. Specifically, it would confer body corporate status on the Fund under Australian law, and enable it to enter into contracts, acquire and dispose of property, institute legal proceedings in its own name, and take any other action to protect the assets of the Fund.

This section would give effect to the terms of the MoU.

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Section 7 – Privileges and Immunities of Fund

Section 6(1)(a)(ii) of the Act provides that the regulations may confer upon an international organisation to which the Act applies 'all or any of the privileges and immunities specified in the First Schedule'. The First Schedule relevantly permits the regulations to confer on such an organisation '[e]xemption from currency and exchange restrictions' (item 5) and '[e]xemption of the organisation from the liability to pay or collect taxes other than duties on the importation or exportation of goods and of the income, property, assets and transactions of the organisation from such taxes' (item 7).

For this purpose, section 7 of the proposed Regulation would confer on the Fund exemption from currency and exchange restrictions, and exemption from income tax in respect of the Fund and its property and assets.

This section would give effect to the terms of the MoU.