X - DIPLOMATIC AND CONSULAR RELATIONS

Diplomatic relations - establishment of diplomatic relations - Angola - Federated States of Micronesia

On 2 June 1988 the Acting Minister for Foreign Affairs and Trade, Mr Duffy, issued the following news release, in part:

> The Acting Minister for Foreign Affairs and Trade, Mr Michael Duffy, said Australia's first Ambassador to Angola, Mr Ed Ride, had presented his credentials to President Jose Eduardo dos Santos, in the Angolan capital, Luanda, on May 30. Mr Ride, who is High Commissioner in Zambia, will have non-resident accreditation to Angola.
>
> Mr Duffy said that, though separated from Angola by a great distance, Australia had a keen interest in developments there. Australia particularly deplored South Africa's armed incursions into Angola, which were a blatant violation of Angola's sovereignty and territorial integrity. "The Australian Government hopes that recent diplomatic moves will lead to a just and peaceful settlement in Angola," he said.

On 25 October 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which stated in part:

> The Minister for Foreign Affairs and Trade, Senator Gareth Evans, today announced the appointment of Mr Ken Brazel as Australia's first Ambassador to the Federated States of Micronesia (FSM).
>
> In 1987, Australia was the first country, other than the United States, to establish diplomatic relations with the FSM when the Australian Consul-General in Honolulu was appointed non-resident Minister to the FSM.
>
> Mr Brazel's appointment follows the announcement in July by Senator Evans, during his visit to the FSM, that Australia would establish an embassy in the capital, Pohnpei.
>
> "The decision to appoint an Ambassador reflects the importance Australia attaches to the close and cooperative relations between Australia and the Federated States of Micronesia, and our interest in working together on matters of importance in our region." Senator Evans said.
>
> "Mr Brazel's appointment also reflects Australia's strong interest in supporting the FSM in developing its international identity as a member of the South Pacific community."

Appointment of ambassadors - Australian constitutional position

Until December 1987 Australian ambassadors had been appointed by the Queen of Australia, notwithstanding that she had earlier assigned the power to make such appointments to her representative in Australia, the Governor-General. In deciding that the appointment of Australian ambassadors should henceforth be made by the Governor-General in the exercise of the executive power in the Australian Constitution, and no longer by the Queen, the Australian Government decided that the Queen should revoke her earlier assignments of powers to the Governor-General. She did so on 1 December 1987, and following is the

Instrument of Revocation published in the *Commonwealth of Australia Gazette* No S 270 on Friday, 9 September 1988:

ELIZABETH R

REVOCATION BY THE QUEEN OF ASSIGNMENTS OF CERTAIN POWERS TO THE GOVERNOR-GENERAL

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth,

GREETING:

WHEREAS section 2 of the Constitution of the Commonwealth of Australia makes certain provision for the exercise by the Governor-General of such powers and functions of the Queen as Her Majesty may be pleased to assign to the Governor-General:

AND WHEREAS section 61 of the Constitution provides that the executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative:

AND WHEREAS any powers and functions assigned under section 2 of the Constitution should not include powers exercisable by the Governor-General under section 61:

NOW THEREFORE we hereby revoke the instruments given by Us on 2 November 1954 and 20 May 1973, to assign to the Governor-General powers and functions in respect of the following matters:

(a) the appointment of Ambassadors Extraordinary and Plenipotentiary to represent the interests of Australia and the termination of appointments of Ambassadors Extraordinary and Plenipotentiary representing the interests of Australia;

(b) the appointment of High Commissioners to represent the interests of Australia in states within the Commonwealth of Nations but not included in Our Realms and Territories, and the termination of appointments of High Commissioners representing the interests of Australia in such states;

(c) the giving of *agrement* for, and the acceptance of credentials of, Ambassadors Extraordinary and Plenipotentiary to represent in Australia the interests of foreign states and High Commissioners to represent in Australia the interests of states within the Commonwealth of Nations but not included in Our Realms and Territories;

(d) the withdrawal of recognition of Ambassadors Extraordinary and Plenipotentiary representing in Australia the interests of foreign states, and of High Commissioners representing in Australia the interests of states within the Commonwealth of Nations but not included in Our Realms and Territories;

(e) the execution, issue and revocation, and the receipt and acceptance, of instruments for or in connection with any of the foregoing matters;

(f) the appointment of persons to be Ministers Plenipotentiary, Counsellors, First Secretaries, Second Secretaries or Third Secretaries in the Diplomatic Service of Our Commonwealth of Australia, of Consul-Generals, Consuls

or Vice-Consuls of Australia, the termination of appointments so made, the issue of Commissions or other instruments necessary for or in connection with appointments so made and, upon termination of the appointments, the revocation of the commissions or other instruments; and

(g) the granting of Exequaturs in respect of foreign consular representatives in Australia and the withdrawal of Exequaturs so granted.

GIVEN at Our Court at St James'
on 1 December 1987
By Her Majesty's Command,
Bob Hawke
Prime Minister

Appointment of Honorary Consuls – first Australian appointment

On 24 July 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release announcing the appointment of Australia's first Honorary Consul. The statement read in part:

Mr Kevin Beamish will be the Australian Honorary Consul in Lae, Papua New Guinea. Senator Evans said that the appointment of Mr Beamish represented a new milestone in the provision of consular services to Australian citizens overseas.

"It is the first such appointment to be made in a number of countries in order to make consular services to Australian citizens travelling and residing overseas more widely available. Honorary consuls also will further Australia's commercial interests. These appointments allow the inexpensive provision of these services in locations where the criteria for posts staffed by career officers cannot be met," Senator Evans said.

"The appointment in Lae is particularly significant because of Australia's close historic and extensive ties with Papua New Guinea, and also because it reintroduces an Australian Government consular post in a location where there was a consular post from 1975 to 1982."...

Australian Honorary consuls, under the direction of a supervising mission, will be able to provide consular welfare and protection assistance to Australian citizens, will accept passport applications for forwarding to the supervising mission, and can provide the Proof of Identity Declaration for passport applicants subject to the usual criteria for the provision of this declaration. They will also assist in furthering Australia's commercial, cultural, scientific and technological interests.

The Australian consulate in Lae will operate out of the premises of ICI DULUX PNG.

Diplomatic accreditation – non-resident accreditation – Holy See

On 19 December 1989 Senator Robert Ray, as Minister representing the Minister for Foreign Affairs and Trade, said in part in answer to a question (Sen Deb 1989, Vol 138, p 4783):

On 11 December Senator Macklin asked me a question about the Australian Embassy to the Holy See, and the possible need for a resident ambassador. The

Government maintains a resident charge d'affaires at the Embassy in the Holy See. He is an experienced officer, and his work is backed up by regular visits to the Vatican by our Ambassador, resident in Dublin. This practice is not unusual. We have used the Embassy to the Holy See to maintain close contact with the Vatican's diplomatic service, which has a deservedly high reputation for being well-informed and enjoying good access. Those contacts have recently produced thorough reporting on the Vatican's engagement with developments in East Europe, assessments of developments in Lebanon, commentary on the Pope's visit to East Timor, and judgments about southern Africa.

Diplomatic relations – opening of embassies – Romanian Embassy in Australia

On 23 November 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1988, Vol 130, p 2620):

> Romania has formally requested that it be permitted to reopen its embassy in Australia and that we reciprocate by opening an embassy in Bucharest. Romania did maintain an embassy in Canberra from 1976 to 1983. Australia has agreed to the reopening of a Romanian embassy in Canberra. It is established practice that Australia allows those countries with which it has full diplomatic relations to maintain resident embassies in Australia, and we expect the embassy to reopen sometime in 1989. Australia has informed the Romanian Government that we will not be opening an embassy in Bucharest.

Diplomatic relations – withdrawal of diplomatic staff – China

On 13 June 1989 Senator Walsh, as Minister representing the Minister for Foreign Affairs and Trade, said in part in answer to a question without notice (Sen Deb 1989, Vol 134, p 3843):

> With regard to Australia's position, at this stage the Government has decided to leave our ambassador and some essential staff in Beijing in order to ensure that Australia retains an effective presence with which to monitor developments and convey our views to the Chinese Government. The recall of the ambassador would remove the most experienced Australian diplomat from Beijing and weaken the skeleton staff which is to remain. But the situation in China, although it seems to have clarified to some extent over the last few days, is still fairly fluid. At this stage the Government's judgment is that it is best to leave the ambassador in place.

Diplomatic relations – travel restrictions placed on diplomats – USSR diplomats in Australia – Australian diplomats in the USSR, Vietnam and Laos

On 28 February 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer to a question on notice (HR Deb 1989, Vol 165, p 96):

> No formal restrictions are imposed upon the Australian Ambassador in travelling to open cities in the USSR. All other Australian diplomatic

representatives are required to seek permission 48 hours in advance of travelling to those cities open to visits by foreigners. The list of open cities is changed regularly. In Vietnam permission is required for Australian diplomatic representatives to travel outside Hanoi, with the exception of travel to the nearby Noi Bai International Airport. In principle this permission needs to be sought seven days in advance for travel to the south and three days in advance for travel elsewhere, but in practice this rule is seldom enforced. Permission is rarely, if ever, refused. In Laos, Australian diplomatic representatives need to seek permission one week in advance to travel beyond checkpoints approximately seven kilometres from the centre of Vientiane.

No restrictions are placed on travel within Australia by Vietnamese and Laotian diplomatic representatives or on the Ambassador of the USSR. No restriction is placed on the Soviet Consul-General in Sydney for travel between Sydney and Canberra. In all other cases, diplomatic representatives of the USSR are required to provide the Department of Foreign Affairs and Trade with 24 or 48 hours notification of any intention to travel within Australia depending on rank, mode of transport and destination.

Diplomatic immunity – Vienna Convention on Diplomatic Relations, Art 31 – Ambassador – operation of a non-embassy bank account – whether a "commercial activity... outside his official functions"

On 14 December 1988 Mr Justice Cole in the Commercial Division of the New South Wales Supreme Court handed down his decision in *Australian Federation of Islamic Councils Inc v Westpac Banking Corporation* (1989) 17 NSWLR 623. The case involved proceedings by the Federation against the Bank as to the title to funds deposited with the Bank. The funds had been donated by the Government of Saudi Arabia to assist with the development of Islamic schools and religious education in Australia. They were the property of the Federation, but were subject to control or disposition on the joint instructions of the President and Treasurer of the Federation and the Ambassador of the Kingdom of Saudi Arabia. The Bank sought, and the Court granted, a stay of the proceedings. The Court held, amongst other things, that, as the Ambassador was a necessary party to the proceedings, and because he enjoyed immunity from suit, the case could not proceed. An extract from His Honour's reasons dealing with the issue of diplomatic immunity (from 629–630) is as follows:

> The Diplomatic Privileges and Immunities Act 1967 (Cth), as amended, gives the force of law in Australia to, relevantly, art 1 and art 31 of the Vienna Convention on Diplomatic Relations. The Ambassador is a "diplomatic agent" within the meaning of art 1. By art 31, a diplomatic agent enjoys immunity from the civil and administrative jurisdiction of the courts of Australia except, relevantly, in an action relating to any "professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions". The Federation contends that in entering into the transaction with the Bank, the Ambassador was engaged in a commercial activity outside his official functions, and thus no immunity applies. Westpac contends that in

entering into the tripartite agreement with the Bank and the Federation, the Ambassador was exercising his official function as representative of the Kingdom of Saudi Arabia in that he was ensuring on behalf of the Kingdom the proper control and disposition of funds in accordance with the requirement and desires of the Kingdom. It contended that the agreement was not a commercial activity: the control of funds for the purposes of Islamic educational institutions and for the advancement of the Islamic religion was the antipathy of a commercial transaction. Westpac argued that, in any event, that question gave rise to a triable issue as to whether or not diplomatic immunity applied pursuant to art 31, and the arising of a triable issue was sufficient to confer immunity in these proceedings upon the Ambassador, as, at Common Law, the courts had no jurisdiction to require an Ambassador to come before the court to argue that he was entitled to immunity.

In my view each of Westpac's contentions is sound.

It is, in my view, clear beyond argument that the Ambassador in conducting the transactions with Westpac and the Council was acting in his official capacity. He had in his possession a cheque drawn on behalf of the Kingdom of Saudi Arabia. It represented a gift to the Federation from the Kingdom for educational and religious purposes according with the educational and religious mores of that Kingdom. He made a gift on behalf of the Kingdom of the funds in circumstances where the funds were to be deposited with him retaining, in his official capacity as Ambassador, a right of control of disposition of the funds once banked. He was no doubt subject to the directions of the Kingdom of Saudi Arabia as to his agreement regarding such disposition. In his correspondence with the Bank subsequent to the deposit, he wrote on the letterhead of the Embassy of Saudi Arabia, and in his capacity as Ambassador. He was thus at all relevant times acting in his official capacity as Ambassador, and on behalf of the Kingdom of Saudi Arabia.

Diplomatic and consular privileges – exemptions from sales tax – United States missions and posts in Australia – legislation

On 17 February 1988 the Acting Minister for Foreign Affairs and Trade, Mr Duffy, introduced the Diplomatic and Consular Privileges Amendment Bill 1988 into Parliament (HR Deb 1988, Vol 159, p 140), and explained the purpose of the Bill in part as follows:

The Bill will amend both the Diplomatic Privileges and Immunities Act 1967 and the Consular Privileges and Immunities Act 1972 which give legislative effect to the provisions of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations respectively.

The Bill provides that tax imposed under any of the various sales tax Acts is not payable in respect of goods intended for the official use, and not resale, of a diplomatic mission or consular post of a prescribed overseas country provided the goods are purchased from a registered sales tax payer.

These amendments have become necessary due to increasing criticism which Australia has received in relation to our interpretation of particular

provisions of the two Vienna Conventions. Under those Conventions the personnel at foreign missions and posts are exempt from direct taxes but must pay indirect taxes of a kind which are normally incorporated in the price of goods or services. The Government has consistently maintained that the Australian sales tax system is, due to its manner of operation, an indirect tax and as such is payable by foreign missions and posts. However, the Government also takes the view that the sales tax and value added tax systems operated by the United States of America and certain western European countries are direct taxes from which Australian personnel are exempt. This interpretation has been disputed and on a number of occasions other countries have sought to collect sales and value added tax not only from Australian personnel but also from missions and posts. In order to maintain our exemption overseas it may, therefore, be necessary while maintaining our interpretation of the Conventions to grant certain countries exemption from Australian sales tax in respect of their official purchases.

At the present time it is not possible to accurately determine the financial impact of these amendments. However, it is the Government's intention that a foreign State will be proclaimed a prescribed overseas country only where Australia is receiving a reciprocal exemption from sales or value added tax and where the cost of providing sales tax exemption in Australia is outweighed by the financial benefits of such reciprocal exemption.

On conclusion of debate on the Bill on 15 March 1988 the Minister for Foreign Affairs and Trade, Mr Hayden, said in part (HR Deb 1988, Vol 159, pp 855–6):

It is correct that there has been some dispute as to what the Vienna Conventions mean when they refer to taxes and whether they cover indirect taxes or only direct taxes. The Government has a longstanding position that the Vienna Convention does not require Australia to grant exemptions from indirect sales tax at the retail level. That is a view that has been held by a succession of governments, not only by this Labor Government but also by earlier Liberal Country Party governments. ...

We intend to persist with the longstanding interpretation of what the Vienna Convention covers in respect of the granting of exemptions on taxes.

Diplomatic visas – the processing of applications from diplomats

On 7 March 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1989, Vol 132, p 531):

It is very difficult to please everyone in this business. It is the case that, from time to time, there are differences of view as between agencies and departments on whether particular visas should be issued for people coming in and differences of view about the time that is necessary to scrutinise the circumstances of the particular diplomatic applicant for a visa. The standard time, as I understand it, has been of the order of 28 or 30 days. I will need to check that point of detail and also the point of detail about the period for which this particular procedure, if it could be so described, has been in place.

One has to make a judgment; weigh and balance on the one hand the desire, no doubt, of security agencies to have an almost open-ended time in which to pursue investigations of this kind, compared with, on the other hand, the need for efficient and effective governmental relationships and not to delay unduly diplomatic visa applicants any more than anybody else's visa application.

Diplomats – propriety of comment on internal affairs – South African Ambassador

On 12 April 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (HR Deb 1989, Vol 166, p 1525):

The Government rejects totally the remarks by the South African Ambassador which implicitly condone the shooting attack against the house of the ANC representative, Mr Eddie Funde. On 20 February 1989, my Department advised the South African Embassy that the Ambassador's remarks in interviews following the shooting had given rise to written complaints to the Prime Minister and Minister for Foreign Affairs and Trade. My Department reiterated to the Embassy the need for statements from diplomatic missions to observe normal proprieties and, in particular, that material should not be cast in terms offensive to the Australian Government or individuals. This is consistent with the guidelines on public statements and media releases which have been sent to all diplomatic missions.

Diplomats – asylum requests from Burmese diplomats and Chinese consular officer in Australia

On 8 November 1988 the Minister for Immigration, Local Government and Ethnic Affairs, Senator Robert Ray, issued a news release which read as follows:

The Opposition Foreign Affairs spokesman, John Spender, has released a statement regarding applications from three staff members of the Burmese Embassy for "political asylum and/or refugee status".

The Minister for Immigration, Local Government and Ethnic Affairs, Senator Robert Ray, said it was normally Government policy neither to confirm nor deny the existence of such applications.

Senator Ray said however that prudent policy had been pre-empted by Mr Spender's release of copies of refugee/political asylum applications from the three Burmese diplomats.

"I only hope Mr Spender had the full consent of the applicants to release this material and that he fully explained to them the consequences of its release," the Minister said.

Senator Ray said to publicise such applications might prejudice their outcome, or affect the situation of the people involved.

He said applications for refugee status were dealt with on an individual case by case basis.

Applications for political asylum are considered by the Minister for Foreign Affairs and Trade.

Applications for refugee status would be considered by the Determination of Refugee Status (DORS) committee.

The DORS committee consists of representatives of the Department of Immigration, Local Government and Ethnic Affairs, the Department of Prime Minister and Cabinet, the Department of Foreign Affairs and Trade and the Attorney-General's Department.

The Office of the United Nations High Commissioner for Refugees also participates as an adviser.

The application would then be considered by the Minister for Immigration, Local Government and Ethnic Affairs, taking into account the advice of the DORS committee.

On 18 November 1988 Senator Ray and the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a joint news release which read as follows:

The Australian Government has granted residency to three Burmese diplomats and their families.

The Minister for Immigration, Local Government and Ethnic Affairs, Senator Robert Ray, said the decision was based on humanitarian grounds.

The diplomats, Messrs Myint Soe, Maung Maung Nyo and Htoo Myint, were supporters of the mass movement calling for democratisation in Burma.

"In the wake of the military take-over in Burma, these men feared that on recall they would be dismissed from their jobs and arrested," Senator Ray said.

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, said the granting of residency on humanitarian grounds was the appropriate mechanism to allow the Burmese to stay in Australia.

The three had applied for political asylum, but, in all the circumstances of their individual cases, this was not considered appropriate. Successive Australian Governments had been very sparing in the granting of political asylum; there having been only three successful applications since Federation.

Senator Ray said his decision to grant the diplomats and their families residency took into account the troubled situation in Burma and the possibility that because of their actions, the diplomats might be deprived of their livelihood on return to Burma.

On 15 June 1989 the Acting Minister for Immigration, Local Government and Ethnic Affairs, Mr Holding, issued the following news release:

Sydney Chinese Consular official Dong Qi has been granted residence status in Australia.

This decision was made by the Acting Minister for Immigration, Local Government and Ethnic Affairs, Clyde Holding on advice from the Immigration Department.

Ms Dong fled the Sydney Consulate last Friday to seek the protection of the Australian Government. Consistent with its established practice in dealing with such cases the Government has not divulged the details of the claims made by Ms Dong.

In announcing the decision Mr Holding said that in view of the current circumstances the Government had no option but to grant Ms Dong permanent residence on humanitarian grounds. An earlier request for diplomatic asylum had been considered inappropriate.

Consideration of Ms Dong's case was accelerated because of the special circumstances surrounding her consular status in this country. Mr Holding indicated that any other Chinese nationals in Australia who might be contemplating asking for residence status would still be best advised to take advantage of the Government's offer to have their visas extended. General applications for residence status at this time would be premature.

Embassies – communications facilities – United States Embassy in Australia

On 13 December 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, announced today that the Government has agreed to a United States request to upgrade the diplomatic communications facilities of its Embassy in Canberra.

The details of the Arrangement for the upgrading will be set out in an Exchange of Notes between the Embassy and the Department of Foreign Affairs and Trade. The Arrangement will be for an initial period of ten years, after which either side may terminate it.

The upgrading of the US Embassy's communications will involve the establishment of a high frequency radio communications facility for emergency use in the event of failure of the existing regional communications relay system using commercial and satellite links.

A 12-hectare site at Coree, west of Canberra, will be leased to the United States under normal ACT lease conditions for the location of five external antennas and a building to house transmitters. The site will not be manned but will be protected by a standard safety fence.

The new system will be part of the United States diplomatic telecommunications service and will carry normal diplomatic traffic. It will not be part of the United States defence communications network and will not be used for military communications of an operational nature.

Senator Evans said that the new facility was part of a world-wide modernisation process for US diplomatic communications. The US intention was to enhance the Embassy's ability to relay diplomatic traffic in all situations, including in times of emergency and stress, and ensure the reliability of those communications, by providing back-up for its existing facilities.

Senator Evans said that the US Embassy in Canberra acted as a regional communications centre relaying diplomatic traffic between Washington and US missions in Australia, the Pacific and the East Asian regions. This was not an unusual procedure. Australia also designated certain of its posts to be regional communications relay centres. The Australian Embassy in Washington was one such relay centre, and under the Arrangement Australia will have

the right to establish a similar facility in Washington as a back-up link for Australian posts in Central and South America.

The terms of the Notes which are to be exchanged will ensure that the proposal is consistent with Australian interests. The requirements of the Environment Protection (Impact of Proposals) Act 1974 have been met. There will be access to the site at regular intervals by Australian technicians: there will also be provision for random inspections by Australian authorities to ensure compliance with the terms of the Arrangement.

The transmitters will be operated under licence from the Minister for Transport and Communications and will be connected to the Embassy premises through links provided by Telecom Australia. All costs for the establishment and operation of the facility will be borne by the Government of the United States of America.

Embassies – diplomatic premises – accommodation for members of the mission – USSR diplomats in Australia

On 28 February 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer to a question on notice (HR Deb 1989, Vol 165, p 116):

The USSR Embassy rents 11 flats and houses from the ACT Housing Trust. The arrangements under which the premises are rented go back many years to when the Commonwealth Government was a principal provider of residential accommodation in the ACT. They reciprocated those made with the Soviet Government for the provision of rental accommodation for staff of the Australian Embassy in Moscow. With the introduction of eligibility criteria for public housing in the ACT, requests by the USSR Embassy for additional leases have been declined. For security reasons, it is not normal practice to make public the addresses of the various premises occupied by staff of the USSR Embassy. Further, I am informed by the ACT Housing Trust that, for reasons of client confidentiality, it could not make the information available.

Embassies – diplomatic asylum – removal of protesters from Australian Embassy premises in Chile

On 5 April 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (HR Deb 1989, Vol 165, p 1075):

The Australian Government has a responsibility to protect its personnel and premises overseas. The non-violent removal of three persons who were illegally occupying the Embassy and who had repeatedly refused the request of Embassy staff to leave the premises was in no way inconsistent with the Government's commitment to human rights. The Government does not accept the occupation of Embassy premises as a legitimate form of protest about a labour dispute in a private company.

Diplomatic property – attack on diplomatic vehicles of members of South African and United States Embassies

On 18 October 1988 the Minister for Justice, Senator Tate, said in answer to a question without notice (Sen Deb 1988, Vol 129, p 1522):

> Following several recent attempts to destroy South African and United States diplomatic vehicles parked at residential premises in Canberra, the Australian Federal Police carried out protracted and intensive investigations. Search warrants issued under section 10 of the Crimes Act 1914 in respect of premises at Ainslie, Griffith and Turner were executed on 14 October and certain articles which it was believed would afford further evidence as to the commission of these offences were seized from each of the premises.
>
> On Monday, 17 October – yesterday – police charged a 32-year-old woman with various offences. The woman was in police custody overnight and appeared in the Australian Capital Territory Magistrates Court this morning. She was granted bail of $5,000 self-surety and $5,000 surety, and is due to appear in court again on 1 December 1988. A 30-year-old man was also charged with various offences and he is due to appear in court on Friday, 21 October.

Consulates – shooting of demonstrator at the Yugoslav Consulate-General in Sydney – protection of diplomatic and consular premises – possession of firearms by diplomatic and consular personnel – consular immunity – closure of Consulate-General

On 27 November 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release, part of which read as follows:

> The Minister for Foreign Affairs and Trade, Senator Gareth Evans, said tonight that the Government viewed with grave concern the incident which involved the tragic shooting of a youth at the Yugoslav Consulate-General in Sydney this afternoon.
>
> Senator Evans said the Ambassador of Yugoslavia, Dr Boris Cizelj, had been called in by the Department of Foreign Affairs and Trade to be told by Deputy Secretary Mike Lightowler that the Government viewed the incident as intolerable and totally unacceptable.
>
> The Australian Embassy in Belgrade has also registered the Government's concern with the Yugoslavian Foreign Ministry.
>
> The Ambassador was told that the Government required the person involved to be made available for interview by the NSW police authorities, and that the firearm which was used should also be made available to the NSW police authorities.
>
> The Ambassador was also asked to provide an assurance that the person involved would not seek to leave Australia before the matter was dealt with.
>
> Senator Evans said the Ambassador had been told that the Government expects complete cooperation from the Embassy and the Consulate-General in dealing with this matter.

> On the evidence presently available, the person involved appears to be a security guard for whom no question of diplomatic immunity arises, and the Ambassador was informed that the Government considered that this was not a matter for which any reliance upon immunity in any form was appropriate.
>
> The Ambassador indicated that he would consult urgently with his Government in Belgrade and make a response as soon as possible. ...
>
> Whatever the provocation involved in the intrusion on the Consulate grounds and the attempt to pull down the flag, the use of firearms in response was totally indefensible. Senator Evans said that he expected that the law in this case would follow the normal course.

On 28 November 1988 the Prime Minister, Mr Hawke, said in part in answer to a question without notice (HR Deb 1988, Vol 164, p 3331):

> The Yugoslav authorities have confirmed today, in response to our representations, that they will cooperate by, firstly, making the person concerned available for interview by the New South Wales police; secondly, handing over the firearm; and, thirdly, ensuring that the person involved would not seek to leave Australia before the matter is dealt with. The Government accepts fully its responsibility to protect the personnel and premises of diplomatic and consular offices in Australia.

On the same day Senator Evans, said in part in answer to a question without notice (Sen Deb 1988, Vol 130, p 2960):

> Whether or not, as claimed by the Yugoslav authorities, protective security by New South Wales police and others was not adequate is essentially a side issue which cannot begin to justify the use of firearms. I am advised that the security protection provided at the Consulate-General was composed of four Australian Protective Service officers and seven members of the New South Wales police force. ...
>
> I add for the record that no question of diplomatic or consular immunity for the officer concerned had been raised by the Yugoslav authorities. The handling of the matter is, accordingly, proceeding on the Australian side on the basis that no such immunity exists or will be claimed.

On 30 November 1988 Senator Evans said in the course of a further question without notice (Sen Deb 1989, Vol 130, p 3168):

> The Yugoslav security guard who was involved in Sunday's shooting incident was interviewed at 4 pm yesterday by the New South Wales police at the Yugoslav Consulate-General and in the presence of the Consul-General. A further interview has been sought for later today at which time the weapon from which the shots were fired will be inspected by the police. This interview process follows advice given by the Yugoslav Ambassador on Monday that his Government had agreed that the person involved in Sunday's shooting incident would be made available for interview by the New South Wales police at the Consulate-General and in the presence of the Consul-General, and that the pistol from which the shots were fired would be made available for inspection by the New South Wales police also at the Consulate-General and in the

presence of the Consul-General. The Ambassador also advised my Department that we could strictly rule out any question of the security guard involved endeavouring to leave Australia. ... no question of diplomatic or consular immunity for the security guard concerned has been raised by the Yugoslav authorities with the Government. Our handling of the matter continues to proceed on the basis that no such immunity exists. Perhaps I should say in further clarification of this point that the matter of immunity is determined both by provisions of the 1963 Vienna Convention on Consular Relations and also agreement by both Governments as to the level or status of the particular officer at the post concerned. Immunity can be waived by the sending Government but it cannot be altered unilaterally by the host Government. It is essentially a matter for determination by the courts in accordance with the applicable law as to whether someone enjoys immunity. ...

... while there would not appear to be any question arising about personal immunity in this case, at least on the basis of what has been put to us so far, it is the case that the consular premises are themselves, in effect, immune from physical access except with the consent of and on conditions set by the Consulate. This has the potential to place obstacles in the way of the law taking its normal course in this case.

The Ambassador has, in his discussions with departmental deputy secretaries handling this case, offered, as I have previously said publicly, every possible cooperation in resolving this matter. So far that cooperation has been reasonably forthcoming from the Consul-General but there are signs, I have to say, that that willingness is diminishing. The Government is continuing to follow the situation very closely and is considering the available action we can take.

With that in mind and against that background, the Ambassador was called in this morning to the Department of Foreign Affairs and told the following: first, that if, when the police have completed their interviews and reviewed the available evidence, they determine that there is a basis on which a prosecution should proceed we would expect the Consulate-General to surrender the person concerned to enable the law to take its course, and secondly, if this did not occur, seriously adverse consequences for the bilateral relationship must be expected to follow. We are currently considering all available options in this respect.

On 1 December 1988 Senator Evans issued the following news release:

This morning the Government formally responded to allegations made by Yugoslavian Government representatives that the level of security provided during the demonstration at the Yugoslav Consulate-General in Sydney last Sunday was inadequate.

A diplomatic note detailing Australia's response was presented to the Yugoslavian Ambassador, Dr Boris Cizelj and Consul-General, Mr Stanojlo Glisic in Canberra by senior officers of the Department of Foreign Affairs and Trade.

The diplomatic note made the following points, among others:

- Under the Vienna Convention[s] on Diplomatic and Consular Relations, the Australian Government is obliged to protect diplomatic and consular staff and premises in Australia. The Australian Government fully accepts this responsibility and takes all appropriate steps to protect diplomatic and consular staff and premises.
- Protection is currently provided by the Australian Federal Police, the Australian Protective Service and State Police, and coordination rests with the Protective Services Coordination Centre, with advice being provided by the Department of Foreign Affairs and Trade. Protective security arrangements also take into account the domestic problems in countries which are represented in Australia.
- The form and level of protective security given to all diplomatic and consular missions is regularly reviewed by the Australian authorities and is designed inter alia to take into account occasions of heightened protest activity against missions and personnel by members of the Australian community or from overseas threat.
- The judgment of the Australian Government, based on the experience of recent years, is that the level of protection provided to Yugoslav missions in Australia has been commensurate with the assessed level of threat.
- During his call on the Department on 17 October 1988, Ambassador Cizelj suggested that the political situation in Yugoslavia might lead to an increased level of threat. The Department of Foreign Affairs and Trade advised him by letter on 19 October 1988 of measures initiated by the Department to upgrade the security of Yugoslav missions. The situation has been closely monitored since through regularly revised threat assessments, and further protective security measures will be taken if considered necessary.
- With respect to the events of Sunday 27 November 1988 at the Consulate-General of Yugoslavia in Sydney, the Consulate-General was informed on 25 November by the Australian Protective Service that the assessed threat for Sunday's demonstration was relatively low. The Consulate-General did not make any response. In recent years, demonstrations in Sydney on Yugoslavia's National Day had been relatively peaceful events without any major incidents and had required minimal supervision. Comparable protection was arranged on this occasion to that provided at previous demonstrations for which there was a similar threat assessment.
- After demonstrators had begun to gather outside the Consulate-General on Sunday 27 November, but while the demonstration was still peaceful, the Australian Protective Service's presence was increased from one to three at 1345 hours. Five New South Wales Police officers were also present. This would normally be regarded as an adequate presence for a peaceful demonstration. When the size of the demonstration increased, four additional Australian Protective Service officers were requested and these officers arrived within ten minutes, just before 1430 hours. At about this time, a number of demonstrators entered the Consulate-General grounds

and further Police reinforcements were called for. At the height of the demonstration, shortly after 1430 hours, and at about the time shots were fired by Consulate staff, the Police presence had been increased to a total of over thirty officers.

- Prior to this, the Department of Foreign Affairs and Trade is informed that the officer-in-charge of the Australian Protective Service present at the demonstration twice (at 1400 and 1420 hours) identified himself over the Consulate-General's intercom and requested permission for his officers to take up positions within the grounds of the Consulate-General. These requests were made before any acts of trespass had occurred. No response was given to either request. A third request was made by telephone by Duty Officer Woodley at the Regional Headquarters of the Australian Protective Service at 1428 hours after a number of demonstrators had entered the grounds of the Consulate-General. Notwithstanding the Consul-General's reply that he would "assist if possible", no action was taken nor permission given to allow entry of the officers.
- The Department of Foreign Affairs and Trade considers that the failure of the staff of the Consulate-General to respond to these requests contributed to the subsequent course of events. Had permission been granted for Australian Protective Service officers to take up position within the grounds of the Consulate-General, those officers would have been in a position to deal with the acts of trespass by demonstrators.
- With respect to legal action against the demonstrators who trespassed into the grounds of the Consulate-General on Sunday 27 November, it is noted that these persons departed the grounds once the Australian Protective Service and the New South Wales Police were able to request them to do so, without having caused visible or significant property damage and without, to the knowledge of the Police officers concerned, having personally assaulted or attempted to assault Consulate staff. The advice of the Australian Protective Service is that in the circumstances of the demonstration, taking into account the long delay in gaining access to the grounds and the prior actions of Consular staff, the priority from a security viewpoint was to clear the Consulate grounds of demonstrators, thus terminating any threat to the consulate and its staff. The aim must be to avoid inflaming such a situation, in which the Police are inevitably outnumbered by the total number of demonstrators and, instead, to defuse it.
- The Australian Protective Service has advised that the level of security provided is determined primarily by the threat assessment relating to the demonstration in question. As noted, the threat assessment in relation to the 27 November demonstration was of a low order. The Australian Protective Service is able to marshal additional resources and secure Police back-up promptly in response to changed circumstances during the course of a demonstration, as was evidenced in their response on this occasion.

Later on 1 December 1988 Senator Evans issued another news release, part of which read as follows:

> I have now received an extensive oral briefing indicating that strong evidence is available to justify prosecution for, among other things, the offence of "Shoot with Intent to do Grievous Bodily Harm" under s 33 of the New South Wales Crimes Act. That evidence includes detailed eye-witness accounts, and a photograph.
>
> On that basis the Yugoslavian Ambassador was called in late this afternoon and told by Deputy Secretary Mike Lightowler of the Department of Foreign Affairs and Trade that:
>
> - the Australian Government believed there is sufficient evidence to justify a serious criminal prosecution against a named employee of the Consulate-General; and
> - the Government insists that the Embassy surrender that person into the custody of the New South Wales police authorities by or before 6pm on Friday 2 December 1988; and
> - if, after 6pm on Friday 2 December that person has not been surrendered as requested, the Australian Government will immediately close the Consulate-General of the Socialist Federal Republic of Yugoslavia in Sydney, and the Consul-General and all of the members of the Consular staff and their dependants will be required to leave Australia by 6pm on Monday 5 December 1988.

On 5 December 1988, following the decision of the Australian Government to close the Yugoslav Consulate-General in Sydney, Senator Evans said in part in answer to a question without notice (Sen Deb 1988, Vol 130, pp 3433–4):

> It has been the view of the Government, and it remains its view, that an offence was committed for which no claim of diplomatic or consular immunity could have been made. But there was, of course, the de facto immunity associated with the persons remaining in the shelter of consular premises, which made impossible the practical arrest of the person until, arguably, such time as he moved out or the status of the Consulate changed.
>
> However, when we made the decision, for reasons that I do not think I need again to retail, to go down the road of closing the Consulate and, in effect, terminating the functions of all the consular officials, which is necessarily involved in such a closure, we found ourselves committed by the terms of article 26 of the Vienna Convention on Consular Relations to ensure safe passage of all the staff and dependants of the Consulate out of the country.
>
> As I made clear at the time, the circumstance was regrettable. As I also said publicly last week, in some sense the circumstance was also ironical in that the act of closure and expulsion thus acquires, under this interpretation and application of the Vienna Convention, a greater degree of immunity after that decision is made than was the case before. But that is a consequence of the strict application of article 26. We were encouraged in our reading of article 26 in those terms by about the only text book that apparently has ever been written on the subject of the Vienna Convention – one that seems to have escaped, along

with most other things, the attention of Mr Spender – that is, Dr Lee's book of 1966 on the Vienna Convention on Consular Relations, which makes the point, quite specifically canvassing this sort of situation where a consular official is properly gaoled or subject to gaoling, whether or not the circumstance of the closure of his mission and the termination of his functions would require an obligation of safe passage under article 26 to be exercised. The answer given by Dr Lee is yes.

I acknowledge, as a lawyer, that an alternative construction is possible when one looks at article 26 and weighs and measures it against the possible application of article 41, which is the one that deals with the possible application of criminal law when offences are committed. But it is a legal argument that would have been, as a practical matter, extremely difficult to test in an environment that was extremely volatile, as I think we are all well aware. Moreover, Australia is very conscious of its international reputation in its observance of the consular and diplomatic Conventions and very conscious of the international perceptions of the way in which this article should be applied. There is no doubt that the perception of the international lawyers associated with the Department and all those whose views they were able to canvass were along the lines that Australia had such an obligation.

The Conventions are based on centuries of diplomatic practice and comprise a major principle of diplomatic law, whether we like it or not, in its application in this case. So all those views were well canvassed last week, both internally within the Government and in discussions I had with the New South Wales Government. They were amicably canvassed with the New South Wales Premier, Mr Greiner, with whom I had a further round of discussions. He took the view, as I did, that the Commonwealth Government had no alternative but to follow the course that it did. He offered the cooperation of the New South Wales police authorities, and I am very glad that that cooperation was received.

...

Once one closes a Consulate and terminates the Consulate officials, the difficulty is that the obligation of safe passage applies to all members of the Consulate concerned. As to the setting of precedents, one hopes of course that this situation will not recur. It is not the first time it has occurred. An analogous situation has occurred in the past. It will be recalled that Britain, in the case of the Libyan murder that occurred there, was in a similar situation for a different set of legal reasons. But the result was the same: Britain felt that it had no course open to it other than to expel the whole Libyan Embassy staff, knowing perfectly well that one of the people it was throwing out was in fact the murderer.

On 6 December 1988 Senator Evans said in part in answer to a question without notice (Sen Deb 1988, Vol 130, p 3563):

... so long as the Consulate remained a Consulate, it was physically inviolable by the Australian Government or anyone else, even though the person concerned may not at any stage have been able to enjoy or claim formal diplomatic or consular immunity. But the premises remained inviolable and

to that extent there was a degree of de facto immunity thus associated with the situation until the time that the Consulate premises were closed. Once the premises were closed, and the functions of the Consul thus terminated, the situation arose where the Australian Government was then bound by the terms of the Vienna Convention to give safe passage out of the country to the people whose functions were thus terminated. That is the construction of that article that has by and large been accepted and certainly, as I said yesterday, that is the textbook construction of it, creating an obligation even for someone in gaol legitimately on an offence to be escorted safely out of the country. That was the conundrum that we faced.

Later the same day Senator Evans issued a news release which read in part:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, today described as "completely unwarranted" the Yugoslav Government's decision to expel three Australian diplomats from the Australian Embassy in Belgrade.

"None of the Australian diplomats involved was in breach in any way of the Vienna Convention on Diplomatic Relations or of the law of Yugoslavia," Senator Evans said.

"This contrasts starkly with the totally unacceptable shooting incident involving a member of the Yugoslav Consulate-General staff in Sydney on Sunday 27 November."

Senator Evans said that while the Yugoslav retaliatory expulsions had not been unexpected, they were deeply regrettable. The Australian Government had hoped, in the light of the initially muted reaction in Belgrade, that common sense and moderation would prevail, but this had not proved the case.

Senator Evans said that the Yugoslav Government had not apologised in any way or expressed its regret for the shooting incident, but had endeavoured instead to deflect attention from it by alleging that inadequate security had been provided by the Australian authorities to the Consulate-General in Sydney.

Senator Evans said the Australian Government's decision to close the Yugoslav Consulate-General in Sydney was fully justified in response to the shooting incident and the subsequent failure of the Yugoslav Government to surrender Zoran Matijas to answer a case in the courts of Australia in relation to evidence justifying a criminal prosecution under Australian law.

The discharge of a firearm by a staff member of the Consulate-General, and the wounding of a member of the Australian public was totally indefensible and constituted a serious violation of internationally accepted standards of conduct.

Senator Evans commented that the inappropriateness of the Yugoslav Government's action was emphasised by the choice of diplomats to be expelled, two of whom are senior migration officers. Belgrade is Australia's largest migration post in Europe outside London and has one of the heaviest migration caseloads. The Yugoslav Government's decision would therefore penalise many Yugoslav citizens wishing to visit Australia or apply to migrate.

On 28 February 1989 Senator Evans provided the following written answer in part in answer to a question without notice (HR Deb 1989, Vol 165, p 167):

Possession of firearms by staff of Embassies and High Commissions is currently permissible under normal licensing arrangements applicable in the Australian Capital Territory. Responsibility for control of the possession and carriage of firearms in the Australian Capital Territory lies with the Registrar of Gun Licences.

Control of the possession and carriage of fire arms in New South Wales is a State responsibility. Staff of consular missions in Sydney are not required to seek the permission of Commonwealth authorities to apply for licences to carry firearms, but they are expected to meet applicable New South Wales laws and regulations. I am advised that the New South Wales Police have no record of any weapons having been registered with them by the Yugoslav Consulate-General.

Consular relations – consular protection – level of protection given to Australian citizens overseas – dual nationals

On 4 April 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (Sen Deb 1989, Vol 132, pp 914–6):

The Australian Government has the most active sympathy for Australian citizens in difficulty overseas and its policy is to provide them with the fullest possible protection within the constraints of international law and practice and available resources. The Department of Foreign Affairs and Trade through its consular officials is responsible for implementing this policy. The functions which may be performed by consular officials are defined in, inter alia, the Vienna Convention on Consular Relations (VCCR) to which Australia is a party. ...

It is probably not widely recognised that compared with other countries a very high percentage of Australians travel overseas (1.4 million departures of Australian citizens in 1987–88). Unfortunately, there is often an unrealistic expectation in the community as to the level of consular protection and services which can be provided. In fact this is limited by the resources of our overseas posts and international law and practice.

Australians who travel overseas should be aware of some of the sensible precautions they can take to facilitate their travel. Australians when travelling overseas can avoid or reduce problems by acting responsibly and prudently by considering and providing for the possible consequences of any hazardous undertakings, by obtaining adequate insurance, and by having due regard for the traditions and laws of the countries in which they travel.

The general level of assistance able to be provided and the limitations faced by consular officers might best be indicated by a brief look at three types of cases involving Australians in difficulty overseas – health, legal offences, and dual nationality. ...

The second type of case relates to Australians caught up in the legal processes of other countries. Australians overseas are subject to the laws, legal processes and code of punishment of the country in which they are travelling

or residing. In some instances these laws, processes and punishments differ greatly from those in Australia, and may sometimes seem to be harsh and unfair. However, the Australian Government is not entitled to interfere in the internal affairs of another country, in much the same way that it would not countenance interference by another country in Australian affairs. The Government can make consular representations only when there is a basis for believing that an Australian citizen has been discriminated against in the process of the law.

When Australians are arrested in another country, consular officers will ensure access to legal representation and will provide regular consular assistance, including visits. They will ensure, so far as possible, that an arrested person receives the benefits of the same laws, administrative measures and protective rights as citizens of that country. Similarly, to the extent that it is possible, they will see that an arrested person gets no less a standard of facilities, including accommodation, diet and medical or dental treatment, as citizens of the country where the arrest took place. They will provide whatever other assistance and advice can reasonably be given. However, consular officers have no status in civil cases involving Australians beyond seeking fair treatment under the law. They cannot provide legal advice and they cannot achieve the release of an arrested person.

The matter of dual nationality often causes difficulty for those Australian travellers who also hold the citizenship of another country. In some countries dual nationals may be liable for military service, or may have restrictions placed on their movements, including being prevented from departing the country. Australians with dual nationality arrested in the country of their other nationality may sometimes be denied access by Australian consular officers. Moreover, according to international practice, a person in a third country is treated as a citizen of the country on whose passport they entered. An Australian citizen may therefore be denied access to Australian consular officers if they are travelling on their non-Australian passport.

The Australian Government has attempted to address these problems and other matters which are not covered by the VCCR by entering into negotiations for consular agreements with a number of countries. An agreement was signed with Hungary in March 1988 which regularises our consular relations together with an accompanying exchange of notes which provide that dual nationals when visiting the country of their other nationality will be treated as citizens of the country on whose passport they are travelling. Negotiations with a number of other countries are at various stages of progress.

Consular relations – consular protection – Australian killed in 1987 by Iraqi warplane – claim for compensation

On 11 November 1988 the Minister for Trade Negotiations, Mr Duffy, issued a news release which read in part:

> The Minister for Trade Negotiations, Michael Duffy, says reconstruction in Iraq following the cessation of hostilities should provide new trade opportunities.

Mr Duffy has just visited the Iraqi capital Baghdad where he met key Government Ministers and visited the Australian pavilion at the Baghdad International Trade Fair.

He said that Iraq's First Deputy Prime Minister, Mr Ramadhan, had told him that the prospects for boosting the bilateral relationship, particularly in Trade, were most promising. ...

Mr Duffy said bilateral talks with Deputy Prime Minster Ramadhan had provided the opportunity to raise other issues of concern to Australia including the use of chemical weapons. ...

Mr Duffy also restated Australia's claim for compensation for the family of Captain Robert Wilcox killed in 1987 by Iraqi war-planes.

Information offices – distinguished from diplomatic or consular premises – Palestine Liberation Organisation office in Australia – status of PLO representative in Australia

On 2 March 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1989, Vol 132, pp 297–8):

I stated on 15 December that Yasser Arafat's announcements and commitments in Geneva the previous day in which he unambiguously accepted Israel's right to exist within secure and recognised borders, when he renounced all forms of terrorism and accepted resolutions 242 and 338 as the basis for negotiation with Israel, had satisfied the Australian Government's conditions for direct dealings with the PLO. Against that background, the Government has decided – that was communicated the day before yesterday to Mr Ali Kazak – that it has no objection to the Palestine Information Office being designated in future the Palestine Liberation Organisation Information Office.

We have taken no decision and communicated no decision about the status of Mr Kazak himself. But the situation is as I have just described it. That has been an executive decision taken by me in consultation with the Prime Minister and communicated in the way that I have described. ...

I make it absolutely clear, as I did in the letter to Mr Kazak, that this office has no diplomatic status in the eyes of the Australian Government, that the Government does not recognise the so-called State of Palestine and as a result the office would not be accorded diplomatic or consular status nor any privileges and immunities of the kind one associates with diplomatic offices. As I have said repeatedly the question of Australian recognition of a Palestinian State, and the diplomatic corollaries of that, will arise only in the context of an overall peace settlement.

The text of the letter from Senator Evans to Mr Kazak read as follows (*Ibid*, p 298):

Senator The Hon Gareth Evans QC
Minister for Foreign Affairs and Trade
Parliament House
Canberra ACT 2600
28 February 1989

Mr Ali Kazak
Director
Palestine Information Office
27 State Circle
Deakin ACT 2600
Dear Mr Kazak,

In my statement of 15 December 1988 I said that PLO Chairman Arafat's unambiguous statement accepting Israel's right to exist within secure and recognised borders, renouncing terrorism and accepting UN Security Council Resolutions 242 and 338 as the basis for negotiations with Israel had cleared the way for direct dealings between the Government and the PLO by meeting the three conditions set down by the Government.

Consistent with this new approach, and in response to your various representations on the subject, I can now advise you that the Government has no objection to the Palestine Information Office being called the Palestine Liberation Organisation Information Office.

Let me make it absolutely clear, however, that since the Government does not recognise the "State of Palestine", your office will not be accorded diplomatic or consular status nor any privileges and immunities. As I have said previously, the question of Australian recognition of a "Palestinian State" will arise only in the context of an overall peace settlement.

The Government has welcomed the positive development in the PLO's approach to the peace process as expressed by Mr Arafat in Geneva and trusts that its commitments are pervasive and permanent. You will appreciate that any retreat from these commitments in the future, however, will necessarily result in a further review of the Australian Government's position. Our willingness to make the kind of gesture embodied in our acceptance of the renaming of your office is very much contingent on both the letter and spirit of those commitments continuing to be observed.

Yours sincerely,
Gareth Evans

On 5 April 1989 Senator Evans said further in the course of an answer to a question without notice (*Ibid*, p 966):

I have had a further communication from Mr Kazak seeking clarification as to whether or not it is the Government's position that it be described as the Palestine Liberation Organisation Information Office or simply the Palestine Liberation Organisation Office. I have responded to that by making it clear the Government has no objection to the office being called the Palestine Liberation Organisation Office; that is to say, simply deleting the word "information", if that is what is requested.

The main point that I have been at pains to make clear to Mr Kazak and others interested in this question is that this in no way represents the granting of diplomatic or consular status to that particular office. It in no way implies that any of the privileges or immunities that are associated with diplomatic or consular status will be attached to the office.