



Australian Government
Department of Foreign Affairs and Trade

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Submission by the Department of Foreign Affairs and Trade to the Joint Standing Committee on the National Capital and External Territories Inquiry into the allocation of land to diplomatic missions in the Australian Capital Territory

The Department of Foreign Affairs and Trade (‘DFAT’) welcomes the opportunity to provide a submission to the Joint Standing Committee on the National Capital and External Territories Inquiry into the allocation of land to diplomatic missions in the Australian Capital Territory.

International Obligations

Australia’s international obligations with regard to diplomatic missions are given effect by the *Vienna Convention on Diplomatic Relations* (‘VCDR’) which is implemented in domestic law in the *Diplomatic Privileges and Immunities Act 1967*. Under the VCDR Australia has an obligation to “either facilitate the acquisition on its territory, in accordance with its laws, by the sending state of premises necessary for its mission or assist the latter in obtaining accommodation in some other way” – Article 21.

Australia also has obligations to protect diplomatic missions under the VCDR – Article 22 – and a further convention, the *Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents* which is implemented in domestic law in the *Crimes (Internationally Protected Persons) Act 1976*.

Increases in the number of diplomatic missions in Canberra

Current demand to establish new diplomatic missions in Australia reflects positively on Australia’s growing profile in the international arena. We are a member of the G20 with a strong and growing economy and are engaged on international issues, highlighted by our current term as a non-permanent member of the United Nations Security Council, and the Commonwealth Ministerial Action Group.

The Australian Government supports the establishment of new diplomatic missions in Canberra, recognising that this reflects positively both on Canberra and Australia. In Canberra this has meant that diplomatic missions want to have their chanceries in certain centrally located areas – principally in the diplomatic estates which form part of the suburbs of Yarralumla, O'Malley and Deakin – or in commercial office buildings. Smaller diplomatic missions might not be established in a purpose-built chancery in the diplomatic estate, but might rent commercial space in the same zones.

Diplomatic missions, as representatives of national governments, have an interest in being visible – both to the host government and visiting nationals of their own countries. Their heads of missions, accredited from head of state to head of state, undertake government-to-government work as well as a range of other functions. The institutions of government with which they deal most frequently are the central agencies, Defence and DFAT and the Parliament of Australia and ministerial offices.

Diplomatic missions also undertake a variety of work for their own nationals. For example, consular representation, receiving applications for travel documents and other forms of identification and polling for national elections and referendum.

Diplomatic missions and the offices of international organisations usually choose to be in areas that give them:

- . ease of access to Parliament House, government departments – particularly central agencies, DFAT and Defence – and other decision makers in key sectors;
- . proximity to other diplomatic missions;
- . visibility in centrally located areas for symbolic and public diplomacy reasons;
- . ease of access for their nationals; and
- . the capacity to provide representational activities.

Interest in establishing diplomatic missions in Australia has been strong in recent years.

Four new diplomatic missions were established in Canberra in 2010 and 2011:

- . Ecuador and Tunisia in 2010 and Paraguay and Georgia in 2011.

Three new diplomatic missions were established in 2012:

- . Vanuatu, El Salvador and Qatar.

One diplomatic mission (Syria) closed in 2012.

Processes are in train for the establishment of five new diplomatic missions and enquiries have been received regarding the establishment of a further seven.

Of the ninety nine diplomatic missions currently established in Canberra:

- . fifty two are in the diplomatic estate;
- . eight have undeveloped leases in the diplomatic estate;
- . forty seven are in temporary accommodation:
 - five in commercially leased premises;
 - nine in the central national area; and
 - thirty five in residential leases – predominantly in areas adjacent to the diplomatic estate.

Of the five international organisations currently established in Canberra:

- . one is in the diplomatic estate;
- . two are in commercially leased premises;
- . one is located at the Australian National University; and
- . one is in the central national area.

The lack of capacity in the diplomatic estate and the nature of the zoning of land in Canberra mean that diplomatic missions which do not establish in commercial premises have to seek permission to use residential premises for their chanceries. The grant of relief from the purpose clause of Crown leases for residential premises can only be temporary – for a period of up to three years. Some diplomatic missions seek to have this extended, others move to new premises. This does not offer certainty for diplomatic missions.

Allocation of land for diplomatic missions

There are other countries, principally those with planned capitals, which have similar arrangements for diplomatic enclaves as occurs in Australia. For example, diplomatic enclaves are found in Islamabad, New Delhi, Brasilia and Kuala Lumpur. We recognise that arrangements regarding the ownership of land in Canberra make the arrangements here unique.

Beyond commercial office space in Civic and limited options in Barton and Kingston, Canberra's nature as a planned capital means that viable options for diplomatic missions to be centrally located may be perceived to be limited. This is in marked contrast to other capitals. Arrangements with diplomatic estates in Canberra have provided the Australian government with a means of addressing this seeming imbalance while continuing to fulfil our international obligations.

Locating missions within a defined Commonwealth owned diplomatic 'estate' has foreign policy advantages. Primarily, this arrangement allows the Australian Government to visibly demonstrate our commitment to fulfilling our international obligations. We can enhance a bilateral relationship by actively assisting a foreign country to acquire land that meets the needs of a diplomatic mission.

This arrangement provides an opportunity for the Australian government to leverage advantage for Australian missions overseas. Whilst not all Australian missions and posts are situated in diplomatic estates overseas, arrangements in Australia mean that the Australian government is better placed to negotiate its mission locales in optimum settings.

Retaining Commonwealth control of diplomatic land provides the flexibility of pursuing either a land swap or a market approach to the acquisition of land for our missions overseas. This can give the Australian Government opportunities to save on the cost of acquiring diplomatic premises. Abolition of the land swap option would not be supported by DFAT as it removes market flexibility and potentially increases the costs and risks of overseas projects undertaken by the Australian Government.

There are benefits in retaining Commonwealth ownership of the diplomatic estate in Canberra and in allocating land the way we do. For example, keeping the land swap option in countries with higher security requirements helps us to have the chancery and residences in close proximity (or co-located to create a mixed-use compound) in a designated diplomatic enclave. The same result may be achievable through the commercial market, but the cost would be higher.

Security considerations may also be a factor in determining the location for some diplomatic missions. Many sending states require a block of land large enough to accommodate features such as a security set-back and capacity for secure parking. The diplomatic estate allows for a more efficient and effective security overlay as part of Australia's broader obligations under the conventions. Disparate mission locations would increase the risk in respect to incident response and security monitoring arrangements.

Conclusion

Current demand from countries to establish diplomatic missions in Canberra reflects Australia's strong and positive engagement as a constructive member of the international community. The allocation of land to diplomatic missions through the diplomatic estate assists Australia to fulfill our international obligations to provide diplomatic missions with reasonable options to be centrally located close to those institutions of government with which they perform their functions as diplomatic missions. Commonwealth control of the diplomatic estate provides some opportunities for us to enhance our negotiating position for our missions overseas.