

3. Diplomatic and Consular Staff

Article 10 of the VCDR and Article 24 of the VCCR provide that MFAT shall be notified of the appointment of members of the Diplomatic Mission or Consular Post, their arrival and final departure, and the termination of their functions with the mission or post.

3.1 Entry into New Zealand

The appointment of all members of a mission or post and their officially recognised family members (refer Chapter 4 for definition) must be formally advised by Third Person Note in advance. The Protocol Division would then arrange the issuance of the necessary visa (diplomatic, consular or official) which the diplomatic/consular staff are required to obtain prior to entry into New Zealand. Refer to Chapter 9, 'Arrival and Departure Processes', for further details.

3.2 Cross-Accredited Staff

Protocol Division must be formally advised by Third Person Note of all staff members cross-accredited to New Zealand from missions or posts outside New Zealand. Until formal advice has been received, such staff have no formal status in New Zealand.

3.3 Defence and Military Personnel

In accordance with Article 7 of the VCDR, advance notice of new and replacement defence and military personnel appointments, including those in Administrative and Technical positions, must be submitted to Protocol Division. This accreditation process can take up to six weeks. Applications must include the proposed appointee's curriculum vitae.

3.4 Head of a Consular Post

Notification of the appointment of a new Head of a Consular Post should be conveyed to Protocol Division by Third Person Note prior to their arrival, attaching a Consular Commission of Appointment and a curriculum vitae. The notification should contain the information required under Article 11 of VCCR, certifying their full name, capacity, category and class, consular jurisdiction and location of the Consular Post.

MFAT will reply by Third Person Note with an Exequatur signed by the Governor-General. Provided that the Exequatur is issued, a career Head of a Consular Post may assume their functions on arrival in New Zealand.

For details of appointment of an Honorary Consular Officer as Head of Post, refer to Chapter 8, 'Honorary Consular Officers'.

3.5 Appointees with New Zealand Citizenship or Permanent Residence

In accordance with Article 8 of the VCDR and Article 22 of the VCCR, diplomatic staff and career consular officers should in principle be of the nationality of the sending state.

MFAT requires prior notification of any appointee who has dual nationality of both the sending state and New Zealand, or New Zealand permanent residence status. In most circumstances (other than for Heads of Mission and Post) consent will be given to the appointment.

Because of the special relationship between New Zealand and the Cook Islands and Niue, and the fact that their representatives are New Zealand citizens, special regulations confer privileges and immunities on their diplomatic and consular staff.

MFAT takes the following approach with respect to immunities for foreign representatives with New Zealand citizenship or permanent residence:

Diplomatic Officers, Administrative and Technical Staff and Service Staff of a Diplomatic Mission

In accordance with Article 38 of the VCDR, diplomatic officers, Administrative and Technical Staff, and members of the Service Staff of a mission who have New Zealand citizenship or permanent residence status shall only be accorded immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of their functions.

Career Consular Officers

Career consular officers who have New Zealand citizenship or permanent residence status shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions.

Consular Employees

Consular employees who have New Zealand citizenship or permanent residence status in New Zealand shall be accorded immunity from jurisdiction in respect of official acts performed in the exercise of their functions.

3.6 Family Members with New Zealand Citizenship or Permanent Residence

Family members of diplomatic or consular officers assigned in New Zealand who have New Zealand citizenship or permanent residence status, or family members who themselves have New Zealand citizenship or permanent residence status (where the principal officer does not), will not be granted diplomatic/consular privileges or immunities.

3.7 Diplomats Performing Consular Functions

Where a country maintains diplomatic representation in Wellington, members of the mission may perform consular functions throughout New Zealand, regardless of the existence of any Consular Post or its approved consular district. Nominated officers of cross-accredited non-resident missions may also do so. The New Zealand Government does not issue an Exequatur to diplomatic officers performing consular functions.

3.8 Designations

The sending state should clearly specify the diplomatic or consular designation of all staff members at the time an appointment is notified to Protocol Division. In terms of Articles 1 of the VCDR and the VCCR, staff of a mission or post should be designated as below.

- Diplomatic: normally accorded only to an officer who is performing substantially diplomatic functions and holding diplomatic rank in a Diplomatic Mission:

High Commissioner/Ambassador/Nuncio/permanent Chargé d'Affaires
Chargé d'Affaires a.i./Acting High Commissioner (in the temporary absence of a Head of Mission)
Deputy High Commissioner/Deputy Head of Mission
Minister
Minister-Counsellor
Counsellor
First, Second or Third Secretary
Attaché

- Consular: normally accorded only to an officer who is performing substantially consular functions and holding consular rank in a Consular Post:

Consul-General
Deputy or Vice Consul-General
Consul
Deputy Consul or Vice-Consul
Consular Agent

- Administrative and Technical Staff: a person assigned by a sending state to administrative and technical service at a diplomatic mission;
- Consular Employee: a person assigned by a sending state to administrative and technical service at a consular post;
- Service Staff: Embassy drivers, cooks and other domestic staff directly employed by the sending state on a rotational posting;
- Private Domestic Staff: domestic staff employed, personally, by an individual member of the mission or post;
- Honorary Consul: refer to Chapter 8.

3.9 Service Staff and Private Domestic Staff

There is a clear distinction between *Service Staff* and *Private Domestic Staff*. *Service Staff* are staff assigned from the sending state and directly employed by the sending state to provide domestic support services to a mission or post, who enjoy limited privileges and immunities (refer to Chapters 17 and 18). *Private Domestic Staff*, on the other hand, are staff in the private domestic employ of individual members of the mission.

Conditions for the entry of *Private Domestic Staff*, whom individual members of a mission wish to bring to New Zealand for the duration of their assignments, are set out in Chapter 5, 'Private Domestic Staff'.

3.10 Trade, Tourism, Cultural and Educational Activities

The New Zealand Government expects that states appointing diplomatic and career consular officers in New Zealand will ensure that their functions conform to those listed in Article 3 of the VCDR and Article 5 of the VCCR.

A distinction is made between officers with representational, advisory and reporting responsibility for economic and commercial affairs and those whose appointment to New Zealand is primarily for the pursuit of business and trading activity for commercial advantage. Staff who operate in trade or investment offices, or trade promotion centres separate from and outside diplomatic or consular premises would not usually be accorded diplomatic or consular status and would be required to apply for work visas direct to Immigration New Zealand. In regard to the cultural activities of a diplomatic or consular officer, the role must focus on fostering or promoting good cultural relations between the sending State and New Zealand. This does not include teaching activities or language schools. All cultural activities undertaken must be non-profit, and the sale of memberships is prohibited.

3.11 Establishment of Additional Staff Positions

Protocol Division's prior approval is required for the establishment of a new (additional) diplomatic, consular or official position at a mission. Missions are required to seek formal approval via a Third Person Note for any increase in staff numbers at the mission. Missions are to provide detailed evidence including a full description of the job role and duties, information on the proposed diplomatic/consular status of the position and the date from which it is proposed to fill the new position. This supporting information should be submitted when the application is made. A request for a new position at a mission or post is not guaranteed. This does not apply to positions filled by locally-employed staff.

3.12 Tenure of Position

The New Zealand Government expects all seconded roles based at a mission or post to be rotational in nature. The maximum duration of an assignment for a diplomatic, consular or official staff member in New Zealand is 10 years.

3.13 Disestablishment of Positions

If a position at a Mission or Post is disestablished, missions/posts are required to inform Protocol Division of any such changes by Third Person Note. If a position at a mission has been left vacant for two years or more it is considered for practical purposes to have been disestablished and should the need arise to refill that position, it should be treated as a new position and the procedure set out in paragraph 3.11 above followed.

* * *