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 at least one month in advance of travel. Protocol Division would then arrange the issuance of the necessary visa (diplomatic, consular or official) which the diplomatic/consular staff must obtain prior to entry into New Zealand. Refer to Chapter 9.

3.2 Cross-Accredited Staff

Protocol Division must be formally advised by the sending State of any staff members it wishes to cross-accredit to New Zealand from missions or posts outside New Zealand. For resident missions who wish to accredit staff from offshore missions, a case must for them to hold diplomatic status while in New Zealand and be issued with a diplomatic visa.

3.3 Defence and Police Personnel

In accordance with Article 7 of the VCDR, advance notice of new and replacement defence (including military) or police personnel, including those in Administrative and Technical positions, must be submitted to Protocol Division. This accreditation process can take up to six weeks, or longer if this is an additional staff position at the mission. Applications should include the proposed appointee's curriculum vitae and passport biodata page.

Police Liaison Attachés or Officers do not have law enforcement jurisdiction in New Zealand and operate only in a liaison, advisory, and information-sharing capacity and may not exercise police powers unless expressly authorised by the New Zealand Government.

3.4 Head of a Consular Post

All appointments of foreign Heads of Consular Posts must be pre-approved by the Ministry. Formal requests for an Exequatur should be submitted by Third Person Note to Protocol Division via email. The Note should advise the seat of the consular post and consular jurisdiction.

A Consular Commission of Appointment should be included if possible, as well as a curriculum vitae and a copy of the nominee's passport biodata page containing their legal name. The curriculum vitae should be a maximum of two pages and include:

- Full name of nominee
- Citizenship(s) held, particularly New Zealand citizenship or permanent residence status
- Photo (passport style)
- Chronological listing of employment history with continuous service, if possible
- Education details
- Details of any military service undertaken.

A formal response can normally be expected within 12 weeks. MFAT will reply by Third Person Note with an Exequatur signed by the Governor-General. Once the Exequatur is issued, a career Head of a Consular Post may then arrive in New Zealand and assume their functions.

For details of the 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:

<u>Diplomatic Officers, Administrative and Technical Staff and Service Staff of a Diplomatic Mission</u>
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 be accorded immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of their functions.

<u>Consular Officers, Consular Employees, and Service Staff of a Consular Post</u>
Career Consular Officers who have New Zealand citizenship or permanent residence status shall be accorded immunity from jurisdiction, and inviolability, only in respect of official acts performed in the exercise of their functions.

Consular Employees and Service Staff who have New Zealand citizenship or permanent residence status in New Zealand shall be accorded immunity from jurisdiction only 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 staff assigned in New Zealand who have New Zealand citizenship or permanent residence status, whether or not the principal officer holds New Zealand citizenship or permanent residence, 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 to an officer who is performing substantially diplomatic functions and holding diplomatic rank in a Diplomatic Mission:

  High Commissioner/Ambassador/Apostolic Nuncio
  Permanent Chargé d'Affaires
  Chargé d'Affaires ad interim (in the temporary absence of a Head of Mission)
  Minister
  Minister-Counsellor
  Counsellor
  First, Second or Third Secretary
  Attaché

  A Deputy High Commissioner or a Deputy Head of Mission is not a formal diplomatic title but is commonly used. Depending on the size and set-up of a mission, a Minister, Counsellor, or First, Second or Third Secretary may be appointed to this position.

- Consular: normally accorded 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: a private individual officially appointed by a foreign state to undertake consular services within a jurisdiction; 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 18 and 19). 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 or post. Missions are required to seek formal approval via a Third Person Note for any increase in staff numbers. 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.