

Australian Legislation Concerning Matters of International Law 2007

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Commonwealth Statutes

1. Airspace Act 2007 (No 38 of 2007)

The primary function of this Act is to transfer the function of airspace regulation from Airservices Australia to the Civil Aviation Safety Authority (CASA). Subsection 8(1) of the Act establishes the requirement for the Minister to make an Australia Airspace Policy Statement (the Statement) on the administration and regulation of, and policy objectives for, Australian administered airspace. CASA must exercise its powers and perform its functions in a manner consistent with the Statement. Under subsection 8(4), the Statement must be consistent with the Convention on International Civil Aviation¹ (the Chicago Convention), including its Annexes. Where Australia has notified differences under Article 38 of the Chicago Convention, the Statement must be consistent with those differences. Article 38 requires States Parties to notify the International Civil Aviation Organisation of any differences between its own practice and that established by the international standard.

Section 12 of the Act provides direction to CASA on how it is expected to perform its functions. This provision is subject to obligations in sections 9A, 11 and 11A of the Civil Aviation Act 1988. In general, these obligations require CASA to perform its functions:

- with regard to the safety of air navigation as the most important consideration;
- in a manner consistent with Australia's obligations under the Chicago Convention and any other international agreements relating to the safety of air navigation; and
- in a manner consistent with the Statement.

Sections 1 and 2 of this Act commenced on 30 March 2007. The remainder of the provisions commenced on 1 July 2007.

¹ [1958] ATS 5.

2. Australian Citizenship Act 2007 (No 20 of 2007)²

The Australian Citizenship Act 2007 (the 2007 Act) replaces the Australian Citizenship Act 1948.

The 2007 Act provides for the acquisition and cessation of Australian citizenship, evidence of Australian citizenship, and identifying information concerning Australian citizenship.

Subdivision AA of Division 2 of Part 2 of the 2007 Act sets out the process by which a person adopted in accordance with the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption³ (the Convention) can apply for Australian citizenship. In order to be eligible to apply for Australian citizenship, the applicant must be adopted in a Convention country by at least one Australian citizen, an adoption compliance certificate issued in that country must be in force for the adoption and, under the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, the adoption must be recognised as effective under the laws of the Commonwealth and each State and Territory.

Sections 1 and 2 of the Act commenced on 15 March 2007. Sections 2A to 54 and Schedule 1 of the Act commenced on 1 July 2007.

3. Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007 (No 85 of 2007)

This Act amends the Corporations Act 2001 and the Trade Practices Act 1974 as part of a series of initiatives to support closer economic relations between Australia and New Zealand through the greater coordination of business law.

The amendments address four initiatives that are intended to be consistent with the Australia New Zealand Closer Economic Relations Trade Agreement⁴ and are included in the work program attached to the 2006 Memorandum of Understanding on Coordination of Business Law between Australia and New Zealand. Relevantly, the Act deals with mutual recognition of securities offerings and reducing filing requirements for certain foreign companies carrying on business in Australia.

Mutual recognition of securities offerings

This is intended to enable entities from New Zealand to offer securities into Australia on the basis of compliance with the New Zealand fundraising requirements with minimal additional requirements imposed by Australian law. Mutual recognition means that Australian entities can offer securities into New Zealand under the same terms. The mutual recognition scheme is intended to

² Note that the Australian Citizenship (Transitional and Consequential) Act 2007 and the Australian Citizenship Regulations 2007 refer to the sections of the Australian Citizenship Act 2007 dealing with application for citizenship by a person adopted in accordance with the Hague Convention on Intercountry Adoption.

³ [1998] ATS 21.

⁴ [1983] ATS 2.

implement the Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings.⁵

Reduced filing requirements

This is also a de-regulatory move, reducing the paper burden for those companies established in New Zealand which wish to carry on business in Australia. The revised Memorandum of Understanding between the Government of Australia and the Government of New Zealand on Coordination of Business Law calls for the closer integration of company laws, in particular managing cross-recognition of company registrations. This means companies in Australia and New Zealand can do business in the other jurisdiction without complying with the filing requirements applicable to other foreign companies.

The majority of the amendments came into force on 21 June 2007.

4. Customs Legislation Amendment (Border Compliance and Other Measures) Act 2007 (No 5 of 2007)

This Act amends the Customs Act 1901 to make changes to a range of customs-related matters such as the disposal of seized goods which are determined to constitute a danger to public health or safety, access restrictions for security identification card holders in certain premises, the power for Customs to request certain information in relation to security identification cards, the implementation of streamlined entry, reporting and duty payment procedures for accredited importers and the protection from criminal responsibility for Customs officers handling prohibited imports, prohibited exports or smuggled goods in the course of duty.

The Act also amends Division 1C of the Customs Act 1901 relating to rules for determining whether a good imported into Australia from the United States (US) is a US originating good and is therefore eligible for a preferential rate of duty. These amendments more accurately implement Australia's obligations under the Australia-United States Free Trade Agreement (AUSFTA)⁶ by amending the circumstances in which the 'change in tariff classification' method and a regional value content requirement may be used. This is designed to ensure that sufficient transformation of materials has occurred within the US, or the US and Australia, to justify a claim that the good is a product of the US.

The Act also amends a number of minor errors in Division 1C to accurately reflect the definitions used in AUSFTA. These amendments align the definitions in the Act to those definitions in AUSFTA.

The majority of the amendments commenced on 19 February 2007.

⁵ [2008] ATS 10.

⁶ [2005] ATS 1

5. Customs Tariff Amendment Act (No 1) 2007 (No 133 of 2007)

Schedule 1 of this Act amends the Customs Tariff Act 1995 to repeal the subheading for the chemical Binapacryl and create a new subheading for this chemical so that it is correctly classified in the Customs Tariff schedule.

The separate identification of this chemical is required under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.⁷ Furthermore, the World Customs Organisation has acknowledged that Binapacryl was originally classified incorrectly.

The amendments made by Schedule 1 apply to goods imported into Australia on or after 20 August 2007 and to goods imported before 20 August 2007, where the time for calculating the rate of import duty on the goods had not occurred before that day.

6. Customs Tariff Amendment (Greater Sunrise) Act 2007 (No 48 of 2007)

This Act makes consequential amendments to the Customs Tariff Act 1995 necessary for Australia to meet its obligations arising under the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste Relating to the Unitisation of the Sunrise and Troubadour Fields (known as the Greater Sunrise International Unitisation Agreement).⁸

The Greater Sunrise International Unitisation Agreement allows for the development of petroleum resources of the Greater Sunrise field, which comprises the Sunrise and Troubadour petroleum reservoirs. The Greater Sunrise petroleum unitisation area straddles an area of Australian maritime jurisdiction and the Joint Petroleum Development Area, the latter being jointly administered by Australia and Timor-Leste by virtue of the Timor Sea Treaty.

The Greater Sunrise International Unitisation Agreement was originally incorporated into the Petroleum (Submerged Lands) Act 1967 and the required amendments were made to the Customs Tariff Act 1995 at the same time. However, when the Petroleum (Submerged Lands) Act 1967 was re-written and renamed the Offshore Petroleum Act in 2006 not all of aspects of the Greater Sunrise International Unitisation Agreement were incorporated. This Act amends the Customs Tariff Act 1995 to change references to the Petroleum (Submerged Lands) Act 1967 to the Offshore Petroleum Act 2006.

The Act commenced on 1 July 2008.

⁷ [2004] ATS 22.

⁸ [2007] ATS 11.

7. Families, Community Services and Indigenous Affairs and other Legislation Amendment (Northern Territory National Emergency Response and other Measures) Act 2007 (No 128 of 2007)

This Act introduces a range of measures forming part of the Commonwealth Government's 'Northern Territory Emergency Response'.

The measures introduced by this Act include a prohibition on the possession and supply of pornographic material within prescribed areas, amendments to Commonwealth law enforcement legislation, government rights over buildings and infrastructure on Aboriginal land and changes to the provisions governing access to Aboriginal land.

Section 4 of the Act provides that the provisions of this Act, and any acts done under or for the purposes of the Act are, for the purposes of the Racial Discrimination Act 1975 (the RDA), special measures. Section 4 further provides that the provisions of the Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the RDA.

Part II of the RDA establishes a prohibition on racial discrimination. Section 8 of the RDA states that Part II does not apply to, or in relation to the application of, special measures as defined under the International Convention on the Elimination of All Forms of Racial Discrimination.⁹

The substantive provisions of this Act commenced on 17 August 2007. Schedules 2, 3, 4 (items 1 to 10 and 18) and 5 commenced on 18 August 2007. Schedule 1 commenced on 14 September 2007. Schedule 4 (items 11 to 17) commenced on 17 February 2008.

8. International Tax Agreements Amendment Act (No 1) 2007 (No 136 of 2007)

This Act amends the International Tax Agreements Act 1953 (the 1953 Act) and is intended to implement Australia's obligations in relation to the following (renegotiated) tax treaties:

- the Convention between the Government of Australia and the Government of the French Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fiscal Evasion, and its associated Protocol¹⁰ (the 2006 France Convention), and
- the Convention between Australia and the Kingdom of Norway for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion¹¹ (the 2006 Norway Convention).

Both Conventions address the form and treatment of income, avoidance of double taxation on income tax and the prevention of fiscal evasion.

⁹ [1975] ATS 40.

¹⁰ [2006] ATNIF 16.

¹¹ [2007] ATS 32.

The amendments repeal the provisions in the 1953 Act that implemented Australia's obligations under existing tax treaties with France and Norway, as well as the airline profits agreement with France relating to taxation of airline profits, and simply insert the text of both renegotiated treaties as Schedules to the 1953 Act. This is consistent with Australia's general practice that tax treaties appear as Schedules to the 1953 Act.

The Act commenced on 3 September 2007. The 2006 France Convention is not yet in force and will enter into force on the first day of the second month following the date of last notification by diplomatic notes that the domestic processes to give the Convention the force of law in the respective countries has been completed. The 2006 Norway Convention entered into force on 12 September 2007.

9. International Tax Agreements Amendment Act (No 2) 2007 (No 146 of 2007)

This Act amends the International Tax Agreements Act 1953 (the 1953 Act) in order to implement Australia's obligations in relation to the Agreement between the Government of Australia and the Government of Finland for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion¹² (the 2006 Finland Agreement).

The 2006 Finland Agreement addresses the form and treatment of income, avoidance of double taxation on income tax and the prevention of fiscal evasion.

The amendments repeal the provisions in the 1953 Act that implemented Australia's obligations under the existing tax treaty with Finland and simply insert the text of the renegotiated treaty as a Schedule to the 1953 Act. This is consistent with Australia's general practice that tax treaties appear as Schedules to the 1953 Act.

The Act commenced on 24 September 2007. The 2006 Finland Agreement entered into force on 10 November 2007.

10. International Trade Integrity Act 2007 (No 147 of 2007)

The Act amends the Charter of the United Nations Act 1945, the Customs Act 1901, the Criminal Code Act 1995 and the Income Tax Assessment Act 1997 to implement the Australian Government's response to recommendations 1 to 3 in the Report of the Inquiry into certain Australian Companies in relation to the UN Oil-for-Food Programme (Cole Inquiry Report).

The Cole Inquiry Report focused on the Iraq sanctions regime. However, the Act goes further to strengthen enforcement of all United Nations (UN) sanctions and combat foreign bribery (not just in relation to Iraq). The Act contains information gathering and handling provisions to improve agencies' ability to administer UN sanctions. It also introduces new offences for individuals or companies that provide false or misleading information in connection with a UN sanctions regime, import or export goods prohibited by UN sanctions or otherwise

¹² [2007] ATS 36.

act in contravention of a Commonwealth law that enforces a UN sanction in Australia.

The Act amends the Charter of the United Nations Act 1945 to:

- create a new offence for people who, or corporations which, engage in conduct that contravenes a UN sanction in force in Australia with increased penalties for breaches;
- introduce strict liability for corporations which engage in conduct that contravenes a UN sanction in force in Australia, including in relation to UN counter-terrorism financing sanctions;
- create a new offence for people who, or corporations which, knowingly or recklessly provide false or misleading information in connection with the administration of UN sanctions, including in relation to the issuance of permits or authorisations;
- create a provision which invalidates any permission granted under information that is false or misleading in a material particular;
- provide agencies responsible for administering UN sanctions the required information gathering powers to determine whether UN sanctions are being complied with and improve information sharing among government agencies; and
- require persons to retain, for five years, documentation in connection with permit applications and compliance with permit conditions.

The Act amends the Customs Act 1901 to:

- introduce new criminal offences for importing or exporting goods sanctioned by the United Nations (UN-sanctioned goods) without valid permission, and
- introduce a new criminal offence for providing information that is false or misleading in a material particular, or omits a material particular, in an application for a permission to import or export UN-sanctioned goods.

The majority of the amendments entered into force on 24 September 2007.

11. Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2007 (No 3 of 2007)

This Act is intended to give effect to the Convention on the Marking of Plastic Explosives for the Purpose of Detection¹³ (the Convention) which entered into force generally on 21 June 1998 and for Australia on 25 August 2007. The Convention is a United Nations counter-terrorism instrument which aims to deter the misuse by terrorists of plastic explosives, by requiring that a detection agent or odorant be incorporated into the manufacture of plastic explosives.

The amendments are set out in Schedules 1 to 3 of the Act and came into force on 25 August 2007.

¹³ [2007] ATS 25.

Schedule 1 – amendments to the Criminal Code Act 1995

Schedule 1 of the Act inserts new Subdivision 72B into the Criminal Code Act 1995, creating offences relating to plastic explosives. These offences are:

- trafficking in unmarked plastic explosives;
- importing or exporting unmarked plastic explosives;
- manufacturing unmarked explosives;
- possessing unmarked explosives; and
- failing to comply with the packaging requirements for plastic explosives.

The amendments set out two marking requirements for plastic explosives: the concentration of detection agent at the time of manufacture, and freshness of the period of time that has elapsed since the manufacture of the plastic explosive. These requirements are set out in Part 2 of the Technical Annex to the Convention.

The amendments also insert into the Criminal Code Act 1995 exemptions for offences, which are, in part, intended to give effect to the exemptions set out in the Convention and the Technical Annex to the Convention. In addition, the amendments insert provisions relating to the forfeit, surrender and destruction of plastic explosives, definitions and geographical jurisdiction.

Schedule 2 – amendments to the Customs Act 1901

Schedule 2 of the Act inserts amendments into the Customs Act 1901 the primary effect of which is to incorporate into that Act the new offences under section 72.13 of the Criminal Code Act 1995 providing for the importing or exporting of unmarked plastic explosives.

Schedule 3 – consequential amendments

Schedule 3 of the Act sets out consequential amendments to the Australian Federal Police Act 1979, Australian Security Intelligence Organisation Act 1979, Crimes Act 1914, Surveillance Devices Act 2004, and Telecommunications (Interception) Act 1979.

12. Maritime Legislation Amendment (Prevention of Air Pollution from Ships) Act 2007

This Act is intended to align Australian requirements with our international obligations as a member State of the International Maritime Organization (IMO) and a party to the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL).¹⁴ The IMO adopted revised texts of Annex I (prevention of pollution by oil) and Annex II (prevention of pollution by noxious liquid substances) of MARPOL in October 2004 and these revised instruments entered into force internationally on 1 January 2007.¹⁵

¹⁴ [1998] ATS 29

¹⁵ [2007] ATS 19

The Act amends Division 12 of the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 to give effect to new requirements in the revised MARPOL Annex I Regulations for the prevention of pollution by oil including the amended regulations on the phasing-in of double hull requirements for oil tankers, pump-room bottom protection and accidental oil outflow performance. The amendments are also intended to implement the new structure of Annex I, which now separates the construction and equipment provisions from the operational requirements and makes clear the distinctions between the requirements for new ships and those for existing ships.

The Act also amends Division 12 of the Navigation Act 1912 and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 to give effect to the revised MARPOL Annex II Regulations for the control of pollution by noxious liquid substances in bulk. This includes a new four-category categorization system for noxious and liquid substances:

- *Category X*: Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a major hazard to either marine resources or human health and, therefore, justify the prohibition of the discharge into the marine environment;
- *Category Y*: Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify a limitation on the quality and quantity of the discharge into the marine environment;
- *Category Z*: Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a minor hazard to either marine resources or human health and therefore justify less stringent restrictions on the quality and quantity of the discharge into the marine environment; and
- *Other Substances*: substances which have been evaluated and found to fall outside Category X, Y or Z because they are considered to present no harm to marine resources, human health, amenities or other legitimate uses of the sea when discharged into the sea from tank cleaning for deballasting operations. The discharge of bilge or ballast water or other residues or mixtures containing these substances are not subject to any requirements of MARPOL Annex II.

The amendments are also intended to implement a number of other significant changes in Annex II such as:

- the setting of significantly lower permitted discharge levels of certain products (produced by ship stripping).
- the marine pollution hazards of thousands of chemicals have been evaluated, resulting in a hazard profile which indexes the substance according to its bio-accumulation; bio-degradation; acute toxicity; chronic toxicity; long-term health effects; and effects on marine wildlife and on

benthic habitats. As a result of the hazard evaluation process and the new categorization system, vegetable oils which were previously categorized as being unrestricted will now be required to be carried in chemical tankers. The revised Annex includes provision for the Administration to exempt ships certified to carry individually identified vegetable oils, subject to certain provisions relating to the location of the cargo tanks carrying the identified vegetable oil.

13. Non-Proliferation Legislation Amendment Act 2007 (No 50 of 2007)

This Act amends the Nuclear Non-Proliferation (Safeguards) Act 1987 (the Safeguards Act) for the purpose of, *inter alia*, giving effect to the Amendments to the Convention on the Physical Protection of Nuclear Material¹⁶ (the Amended Convention) agreed in July 2005 and regulating the decommissioning of nuclear facilities to ensure compliance with Australia's international obligations to the International Atomic Energy Agency (the Agency).

The Act also extends the geographical jurisdiction of offences in the Safeguards Act, Chemical Weapons (Prohibition) Act 1994, and Comprehensive Nuclear Test-Ban Treaty Act 1998 relating to proliferation of chemical and nuclear weapons respectively.

The Act also makes a consequential amendment to the Australian Federal Police Act 1979.

The amendments commenced on 11 April 2007.

Amendments to the Convention on Physical Protection of Nuclear Material

In July 2005 the Convention on the Physical Protection of Nuclear Material¹⁷ (the Convention) was amended to make it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage and transport. The Act gives effect to the Amended Convention by amending the Safeguards Act to:

- allow a permit to be issued with respect to decommissioning a nuclear facility;
- create offences for decommissioning of a nuclear facility without a permit; carrying, sending or moving nuclear material into or out of Australia or a foreign country; or doing, or threatening to do, an act directed against a nuclear facility or that interferes with the operation of a nuclear facility;
- broaden the scope of existing offences relating to the use of, or threat to use, nuclear material to include use causing death or injury to persons or damage to property or the environment; and
- broaden the scope of places that Agency inspectors have the right to inspect.

¹⁶ [2006] ATNIF 14.

¹⁷ [1987] ATS 16.

The Act amends the Safeguards Act to include references to the Convention's definitions of 'nuclear material' and the Amended Convention's new definition of 'nuclear facility'. As the reference to the new definition of 'nuclear facility' will only have effect once the Amended Convention enters into force, the full text of the definition has been inserted into the Safeguards Act until that time.

Geographical jurisdiction

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction¹⁸ and the Comprehensive Nuclear Test-Ban Treaty¹⁹ require each State Party to adopt necessary measures to implement its obligations, in particular, by enacting penal sanctions with respect to prohibited activity undertaken by all persons on its territory or jurisdiction and prohibited activity undertaken by its nationals anywhere. The Convention similarly requires each State Party to take necessary measures to establish jurisdiction where an offence is committed in that State's territory or where the alleged offender is a national of that State.

The Act amends the Safeguards Act, the Chemical Weapons (Prohibition) Act 1994, and Comprehensive Nuclear Test-Ban Treaty Act 1998 to specify that the geographical scope of jurisdiction for offences relating to the proliferation of chemical and nuclear material respectively is that set out in section 15.2 of the Criminal Code Act 1995 (extended geographical jurisdiction – category B). Category B jurisdiction applies where: the conduct occurs wholly or partly in Australian territory; the conduct occurs wholly outside Australia and a result of the conduct occurs wholly or partly in Australian territory; or the conduct occurs wholly outside Australia and the alleged perpetrator is an Australian citizen or resident.

14. Northern Territory National Emergency Response Act 2007 (No 129 of 2007)

This Act introduces a range of measures forming part of the Commonwealth Government's 'Northern Territory Emergency Response'.

The measures introduced by this Act include restrictions on the possession, consumption, sale and transportation of liquor in the Northern Territory; a scheme to prevent and detect misuse of publicly funded computers within prescribed areas of the Northern Territory; the acquisition of five-year leases over certain Aboriginal townships in the Northern Territory; continuation and improvement of community services in certain areas; a prohibition on taking customary law or cultural practice into account in bail and sentencing decisions in the Northern Territory in certain circumstances; and a new licensing regime for community stores in Indigenous communities.

¹⁸ [1997] ATS 3.

¹⁹ *Select Documents on International Affairs* 44 (1996) 15.

Section 132 provides that the provisions of this Act, and any acts done under or for the purposes of the Act, are, for the purposes of the Racial Discrimination Act 1975 (the RDA), special measures. Section 132 further provides that the provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the RDA.

Part II of the RDA establishes a prohibition on racial discrimination. Section 8 of the RDA states that Part II does not apply to, or in relation to the application of, special measures as defined under the International Convention on the Elimination of All Forms of Racial Discrimination.²⁰

The substantive provisions of this Act commenced on 18 August 2007. Sections 32 and 33 of this Act commenced on 17 February 2008.

15. Offshore Petroleum Amendment (Greater Sunrise) Act 2007 (No 49 of 2007)

This Act makes necessary amendments to the Offshore Petroleum Act 2006, the Petroleum Resource Rent Tax Assessment Act 1987 and the Radiocommunications Act 1992 in order for Australia to meet its obligations arising from the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste Relating to the Unitisation of the Sunrise and Troubadour Fields²¹ — known as the Greater Sunrise Unitisation Agreement. This Act incorporates the Greater Sunrise unitisation agreement into the Offshore Petroleum Act 2006.

The Greater Sunrise petroleum unitisation area straddles an area of Australian jurisdiction and the Joint Petroleum Development Area, the latter being jointly administered by Australia and Timor-Leste by virtue of the Timor Sea Treaty.

The Greater Sunrise Unitisation Agreement allows for the development of petroleum resources of the Greater Sunrise field, which comprises the Sunrise and Troubadour petroleum reservoirs, as a single unit by providing for consistent administrative requirements such as a consistent legislative regime for petroleum operations throughout the unit area in relation to safety, occupational health and environmental protection.

The Greater Sunrise Unitisation Agreement reflects agreement reached by Australia and Timor-Leste that, in effect, the essential elements of the petroleum licensing regime on each side of the boundary will be maintained. It provides for a parallel system of administration of the two regimes via consultation and information sharing.

The Act commenced on 1 July 2008.

²⁰ [1975] ATS 40.

²¹ [2007] ATS 11.

16. Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (No 130 of 2007)

This Act amends social security law to introduce welfare payment reform as part of the Commonwealth Government's 'Northern Territory Emergency Response'.

The Act establishes a national income management regime that applies in respect of welfare payments to a person whose child is at risk of neglect, is not enrolled at school, or fails to attend school.

Sections 4 and 6 of the Act provide that certain specified provisions and acts relating to the income management regime are, for the purposes of the Racial Discrimination Act 1975 (the RDA), special measures. Sections 4 and 6 further provide that certain specified provisions and acts relating to the income management regime are excluded from the operation of Part II of the RDA.

Part II of the RDA establishes a prohibition on racial discrimination. Section 8 of the RDA states that Part II does not apply to, or in relation to the application of, special measures as defined under the International Convention on the Elimination of All Forms of Racial Discrimination.²²

This Act commenced on 18 August 2007.

17. Water Act 2007 (No 137 of 2007)

The Water Act 2007 is intended to implement proposals in the National Plan for Water Security policy and builds upon the 2004 National Water Initiative. It establishes the Murray-Darling Basin Authority with responsibility for planning water resources for the Murray-Darling Basin and a new role for the Australian Competition and Consumer Commission to monitor and enforce water charge and market rules in the Basin.

The Act mandates the use of a Basin Plan for the management of water resources in the Murray-Darling Basin to impose limits on the quantity of water that may be taken, plan for water resources in the Murray-Darling Basin and ensure that water resources are managed in an integrated and sustainable way. The Act requires the Basin Plan to give effect to relevant international agreements — to the extent that those agreements are relevant to the use and management of Basin water resources — and to balance environmental, social and economic considerations as they relate to the integrated management of Basin water resources.

Relevant international agreements are defined as:

- the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention);²³
- the Convention on Biological Diversity;²⁴

²² [1975] ATS 40.

²³ [1975] ATS 48.

²⁴ [1993] ATS 32.

- the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification Particularly in Africa;²⁵
- the Convention on the Conservation of Migratory Species of Wild Animals;²⁶
- the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment;²⁷
- the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment;²⁸
- the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds;²⁹ and
- the United Nations Framework Convention on Climate Change.³⁰

The Act commenced on 3 March 2008.

Commonwealth Regulations

18. Antarctic Seals Conservation Repeal Regulations 2007 (SLI 2007 No 143)

The purpose of the Repeal Regulations is to repeal the Antarctic Seals Conservation Regulations 1986 which have, to date, implemented Australia's obligations under the Convention for the Conservation of Antarctic Seals. These Regulations will become obsolete once Schedule 1 to the Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Act 2006 (the Amendment Act) comes into effect. The Amendment Act has, in effect, incorporated the Regulations into the Amendment Act. Transfer of provisions concerning the protection of Antarctic seals from the Regulations to the Amendment Act will enable appropriate penalties to be imposed for offences relating to seals.

The Regulations took effect on the commencement of Schedule 1 to the Amendment Act, which commenced on 11 June 2007.

²⁵ [2000] ATS 18.

²⁶ [1991] ATS 32.

²⁷ [1988] ATS 22.

²⁸ [1981] ATS 6.

²⁹ [2007] ATS 24.

³⁰ [1994] ATS 2.

19. Aviation Transport Security Amendment Regulations 2007 (No 2) (SLI 2007 No 170)

These Regulations, *inter alia*, permit foreign Aviation Security Identification Card (ASIC) applicants to use additional identification documents in order to verify their identity in their application. Foreign ASIC applicants may now use photographic flight crew licences issued by an International Civil Aviation Organization contracting state as secondary identification documents, on the condition that the flight crew licence is presented with a valid passport as a primary form of identification.

This provision of the Regulations commenced on 1 July 2007.

20. Civil Aviation Amendment Regulations 2007 (No 1) (SLI 2007 No 70)

These Regulations support amendments to the Civil Aviation Act 1988 relating to mutual recognition with New Zealand of aviation-related certification, including by identifying two documents for the purposes of the definition of ANZA mutual recognition agreements in subsection 3(1) of the Civil Aviation Act 1988. The documents are the Arrangement between the Australian and New Zealand Governments on Mutual Recognition of Aviation-Related Certification, agreed 13 February 2007 and the Operations Arrangement between the Civil Aviation Safety Authority of Australia and the Civil Aviation Authority of New Zealand in relation to mutual recognition of Air Operator Certificates, agreed 16 March 2007.

These Regulations commenced on 30 March 2007.

21. Regulations made under the Criminal Code Act 1995

Division 102 of the Criminal Code Act 1995 (the Criminal Code) sets out the offences in relation to terrorist organisations, which are: directing the activities of a terrorist organisation; being a member of a terrorist organisation; recruiting persons to a terrorist organisation; receiving training from or providing training to a terrorist organisation; or receiving funds from or making available funds, support or resources to a terrorist organisation. The Criminal Code Regulations 2002 (the Principal Regulations) specify terrorist organisations for the purposes of Division 102 of the Criminal Code.

Criminal Code Amendment Regulations 2007 (No 1) (SLI 2007 No 3)

The Regulations amend the Principal Regulations to ensure that the organisation known as Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn (TQJBR) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 17 February 2007.

Criminal Code Amendment Regulations 2007 (No 2) (SLI 2007 No 39)

The Regulations amend the Principal Regulations to ensure that the organisation known as Ansar al-Sunna and its aliases (as outlined in the Regulations), is

specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 24 March 2007.

Criminal Code Amendment Regulations 2007 (No 3) (SLI 2007 No 47)

The Regulations amend the Principal Regulations to ensure that the organisation known as Asbat al Ansar (AAA) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 31 March 2007.

Criminal Code Amendment Regulations 2007 (No 4) (SLI 2007 No 48)

The Regulations amend the Principal Regulations to ensure that the organisation known as Islamic Movement of Uzbekistan (IMU) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 31 March 2007.

Criminal Code Amendment Regulations 2007 (No 5) (SLI 2007 No 49)

The Regulations amend the Principal Regulations to ensure that the organisation known as Lashkar-e Jhangvi (LeJ) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 31 March 2007.

Criminal Code Amendment Regulations 2007 (No 6) (SLI 2007 No 50)

The Regulations amend the Principal Regulations to ensure that the organisation known as Egyptian Islamic Jihad (EIJ) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 31 March 2007.

Criminal Code Amendment Regulations 2007 (No 7) (SLI 2007 No 51)

The Regulations amend the Principal Regulations to ensure that the organisation known as Islamic Army of Aden (IAA) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 31 March 2007.

Criminal Code Amendment Regulations 2007 (No 8) (SLI 2007 No 52)

The Regulations amend the Principal Regulations to ensure that the organisation known as Jaish-e-Mohammad (JeM) and its aliases (as outlined in the Regulations),

is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 31 March 2007.

Criminal Code Amendment Regulations 2007 (No 9) (SLI 2007 No 125)

The Regulations amend the Principal Regulations to ensure that the organisation known as Hizballah's External Security Organisation (ESO) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 25 May 2007.

Criminal Code Amendment Regulations 2007 (No 10) (SLI 2007 No 265)

The Regulations amend the Principal Regulations to ensure that the organisation known as Palestinian Islamic Jihad (PIJ) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 8 September 2007.

Criminal Code Amendment Regulations 2007 (No 11) (SLI 2007 No 266)

The Regulations amend the Principal Regulations to ensure that the organisation known as Hamas' Izz al-Din al-Qassam Brigades and its alias (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 8 September 2007.

Criminal Code Amendment Regulations 2007 (No 12) (SLI 2007 No 267)

The Regulations amend the Principal Regulations to ensure that the organisation known as Lashkar-e-Tayyiba (LeT or LT) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 8 September 2007.

Criminal Code Amendment Regulations 2007 (No 13) (SLI 2007 No 290)

The Regulations amend the Principal Regulations to ensure that the organisation known as Kurdistan Workers Party (PKK) and its aliases (as outlined in the Regulations), is specified as a terrorist organisation for the purposes of the criminal offences relating to terrorist organisations set out in Division 102 of the Criminal Code.

The Regulations commenced on 28 September 2007.

22. Regulations made under the Customs Act 1901

Section 50 of the Customs Act 1901 (the Act) provides, in part, that the Governor-General may, by regulation, prohibit the importation of goods into Australia absolutely or subject the importation of goods into Australia to specified conditions or restrictions. The Customs (Prohibited Imports) Regulations 1956 (the Principal Import Regulations) control the importation of the goods specified in the various regulations and Schedules.

Section 112 of the Act also provides, in part, that the Governor-General may, by regulation, prohibit the exportation of goods from Australia. The Customs (Prohibited Exports) Regulations 1958 (the Principal Export Regulations) control the exportation of goods specified in the various regulations and Schedules.

These regulations under the Customs Act 1901 are used, in part, to give effect to sanctions adopted by the UN Security Council under Ch VII of the UN Charter and other unilateral sanctions.

Customs (Prohibited Exports) Amendment Regulations 2007 (No 1) (SLI 2007 No 4)

These Regulations amend the Principal Export Regulations to prohibit the export of goods to the Islamic Republic of Iran — as specified in the list, if any, determined by the Foreign Minister under regulation 18 of the Charter of the United Nations (Sanctions — Iran) Regulations 2007.

The Regulations implement sanctions against Iran imposed by United Nations Security Council Resolution 1737 (2006) which provides, *inter alia*, that all Member States shall prevent the supply, sale or transfer to, or for the benefit of, Iran of all items which could contribute to Iran's nuclear enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems.

The Regulations commenced on 20 February 2007.

Customs (Prohibited Exports) Amendment Regulations 2007 (No 3) (SLI 2007 No 292)

The Principal Export Regulations impose restrictions on the export of certain 'source materials' — materials from which special fissionable material may be produced including natural uranium, depleted uranium and thorium.

These Regulations clarify the export restrictions applying to source materials and include an additional exemption from these export restrictions to two additional ores and concentrates, being tantalum concentrates and tantalum glass. The Regulations also insert a new exemption controlling the export of ores and concentrates below containing less than 0.05% by weight of a material mentioned on the prohibited export list, or any combination of those prohibited materials.

These Regulations commenced on 29 September 2007.

Customs (Prohibited Imports) Amendment Regulations 2007 (No 1)
(SLI 2007 No 5)

These Regulations insert new regulation 4Z into the Principal Import Regulations to prohibit the importation from Iran of goods that are items, materials, equipment, goods or technology listed in Security Council documents S/2006/814 and S/2006/815 without the written permission of the Foreign Minister or other authorised person. The items in these documents relate to nuclear programmes and to ballistic missile programmes respectively. This amendment is intended to implement sanctions against Iran imposed by United Nations Security Council Resolution 1737 (2006).

These Regulations commenced on 20 February 2007.

Customs (Prohibited Imports) Amendment Regulations 2007 (No 2)
(SLI 2007 No 110)

These Regulations amend regulation 4Z of the Principal Import Regulations to extend the United Nations Security Council sanctions against Iran. As stated above, regulation 4Z currently implements United Nations Security Council Resolution 1737 (2006). The Regulations implement further sanctions against Iran imposed by United Nations Security Council Resolution 1747 (2007). That Resolution provides, in part, that all Member States should prevent the procurement of arms or related materiel from Iran by their nationals, or using their flag vessels or aircraft, whether or not the goods originate in the territory of Iran.

These Regulations commenced on 15 May 2007.

Customs (Prohibited Imports) Amendment Regulations 2007 (No 3)
(SLI 2007 No 245)

The Regulations repeal regulation 4P of the Principal Import Regulations and remove the prohibition on the importation of rough diamonds from Liberia in line with the announcement by the President of the Security Council on 27 April 2007 that the import ban imposed pursuant to Security Council Resolution 1521 (2003) had been lifted. The importation of rough diamonds from Liberia still requires the relevant Kimberley Process Certificate to be provided as a necessary condition of importation. The Kimberley Process Certificate Scheme is an international certification arrangement for rough diamonds adopted pursuant to the Interlaken Declaration of 5 November 2002.

The Regulations also repeal regulation 4Q of the Principal Import Regulations, removing the prohibition on the importation without permission of round logs and timber products from Liberia in line with the announcement by the President of the Security Council on 20 June 2006 that the import ban under Security Council Resolution 1521 (2003) would not be renewed.

These Regulations commenced on 25 August 2007.

Customs (Prohibited Imports) Amendment Regulations 2007 (No 4)
(SLI 2007 No 246)

These Regulations introduce a new importation prohibition on plastic explosives, in line with amendments made to the Criminal Code Act 1995 by the Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2007, which is intended to give effect to the Convention on the Marking of Plastic Explosives for the Purpose of Detection.³¹

The Regulations add new regulation 4AA to the Principal Import Regulations to prohibit the importation of plastic explosives, other than those plastic explosives included in a class of goods described in Schedule 2 of the Principal Regulations, without permission from the Attorney-General or other authorised person.

These Regulations commenced on 25 August 2007.

**23. Environment Protection and Biodiversity Conservation
Amendment Regulations 2007 (No 1) (SLI 2007 No 9)**

The Environment and Heritage Legislation Amendment Act (No 1) 2006 made a range of amendments to the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act). As a consequence of these amendments, the repeal and replacement of certain regulations under the EPBC Act has been necessary.

These Regulations amend a range of matters in the Environment Protection and Biodiversity Conservation Regulations 2000, including the requirements for nominations of threatened species and ecological communities, the requirements for whale watching activities and the identification of biosecurity reports that can be utilised for assessing permit applications for live imports under the EPBC Act. The amendments also prescribe the International Union for the Conservation of Nature categories to which Commonwealth reserves may be assigned under section 346 of the EPBC Act.

These Regulations commenced on the commencement of item 1 of Schedule 1 to the Environment and Heritage Legislation Amendment Act (No 1) 2006, being 12 December 2006.

24. Regulations made under the Extradition Act 1988

The Extradition Act 1988 (the Extradition Act) makes provision for the extradition of persons from Australia to certain prescribed countries, and facilitates the making of a request for extradition by Australia to other countries. Section 5 of the Extradition Act defines 'extradition country' to include a country that is declared by the regulations to be an extradition country. Subparagraph 11(1)(b) of the Extradition Act provides that the regulations may make provision for application of the Act subject to certain limitations, conditions, exceptions or qualifications. Permission is already required under regulation 4 of the Principal Regulations to import goods included in a class of goods described in Schedule 2 to the Principal Regulations.

³¹ [2007] ATS 25.

Extradition (Czech Republic) Regulations 2007 (SLI 2007 No 247)

These Regulations declares the Czech Republic to be an ‘extradition country’ under the Extradition Act. By doing so, the Regulations enable Australia to consider extradition requests received from the Czech Republic. Extradition to the Czech Republic is subject to a modification that following the provisional arrest of a person, the arrested person may apply to a magistrate for release after 60 days if a request for his or her extradition has not been received. The standard period under the Extradition Act is 45 days.

These Regulations do not create an obligation on the Czech Republic to receive or execute extradition requests from Australia.

These Regulations commenced on 28 August 2007.

Extradition (Physical Protection of Nuclear Material) Amendment Regulations 2007 (No 1) (SLI 2007 No 269)

These Regulations apply the Extradition Act to the States Parties to the Convention on Physical Protection of Nuclear Material (the Convention),³² which are listed in Schedule 1 of the Regulations, by declaring each listed country to be an ‘extradition country’ for purposes related to that Convention. The effect of the Regulations is to allow Australia to receive an extradition request from a State Party declared by the Regulations to be an extradition country, for an offence specified in the Convention. Article 8 of the Convention contains an obligation on States Parties to extradite persons accused of Convention offences. This portion of the Regulations commenced on 12 September 2007.

The Regulations are also intended to reflect recent changes to the Convention relating to political offences. The Convention has been amended to include a new Article 11A which provides that the offences included in Article 7 of the Convention should not be considered political offences for the purposes of extradition or mutual assistance. Article 7 of the Convention lists those acts relating to the physical protection of nuclear material in relation to which the Convention requires States Parties to make offences under their domestic law. The Regulations state that an offence mentioned in Article 7 of the Convention is not a political offence for the purpose of section 5 of the Extradition Act. Section 5 of the Extradition Act defines ‘political offence’ and lists offences which are not political offences for the purposes of the Act. The definition of political offence in the Extradition Act extends to the Mutual Assistance in Criminal Matters Act 1987.

This portion of the Regulations will commence when the Amendments to the Convention done in July 2005 enter into force for Australia. The Amendments are not yet in force.

Extradition (Slovakia) Regulations 2007 (SLI 2007 No 248)

These Regulations declare Slovakia to be an ‘extradition country’ under the Extradition Act. By doing so, the Regulations enable Australia to consider

³² [1987] ATS 16.

extradition requests received from Slovakia. Extradition to Slovakia is subject to a modification that following the provisional arrest of a person, the arrested person may apply to a magistrate for release after 60 days if a request for his or her extradition has not been received. The standard period under the Act is 45 days. The Regulations define Slovakia as the Slovak Republic.

These Regulations do not create an obligation on the Slovak Republic to receive or execute extradition requests from Australia.

These Regulations commenced on 28 August 2007.

25. Family Law (Child Abduction Convention) Amendment Regulations 2007 (No 1) (SLI 2007 No 213)

These regulations amend the Family Law (Child Abduction Convention) Regulations 1986.

The amendment regulations are intended to improve the operation and effectiveness in Australia of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.³³ The purpose of the Convention is to discourage parental child abduction. The objects of the Convention are to secure the prompt return of children wrongfully removed to or retained in any Convention country, and to ensure the rights of custody and access to children under the laws of a country which is party to the convention are effectively respected in other Convention countries.

The amendments:

- allow an Australian Central Authority designated to discharge the duties imposed by the Convention to refuse to accept a request for the return of a child abducted from Australia if the request is not in accordance with the Convention;
- clarify the types of orders that may be sought from a court by a Central Authority or an individual applicant where a child has been abducted to Australia;
- enable the court greater discretion to discharge an order made by an Australian court requiring a child to be returned under the Convention; and
- clarify that the role of a Central Authority in regards to the making of arrangements for the return of a child under the Convention does not extend to paying for such arrangements, following a recent court decision which suggested that the Central Authority could be held liable to pay for such arrangements.

The amendments also add Bulgaria, Guatemala, Lithuania, Nicaragua and Thailand to the list of Convention countries in Schedule 2.

The Regulations commenced on 24 July 2007.

³³ [1987] ATS 2.

26. Hazardous Waste (Regulation of Exports and Imports) Amendment Regulations 2007 (SLI 2007 No 34)

The Hazardous Waste (Regulation of Exports and Imports) Act 1989 implements Australia's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, an international treaty set up to control the movement of hazardous waste from one country to another.

Paragraph 18A(2)(a) of the Act states that the Minister may grant a Basel Export Permit authorising the export of hazardous waste destined for final disposal if, at the time of the decision to grant the permit, particulars of the export are specified in the regulations. Specification of these particulars by regulation is a prerequisite to the Minister's decision-making process. The purpose of the proposed Regulations is to specify the particulars of a proposed export of hazardous waste (hexachlorobenzene) to Germany for final disposal.

The Regulations entered into force on 1 March 2007.

27. Inspector of Transport Security Regulations 2007 (SLI 2007 No 117)

These Regulations identify the international obligations with which the Inspector of Transport Security must comply. Section 81 of the Inspector of Transport Security Act 2006 states that the Inspector must perform his or her functions in a manner consistent with Australia's obligations under international agreements, as identified by the regulations. These Regulations identify paragraphs 5.12 and 6.2 of Annex 13 of the Convention on International Civil Aviation³⁴ (the Chicago Convention) as an international agreement with which the Inspector's actions must be consistent. Annex 13 of the Chicago Convention deals with aircraft accident investigation.

These Regulations commenced on 7 June 2007, at the commencement of section 25 of the Inspector of Transport Security Act 2006.

28. International Development Law Organisation (Privileges and Immunities) Regulations 2007 (SLI 2007 No 85)

The Regulations give effect to a Memorandum of Understanding between the Australian Government and the International Development Law Organisation (IDLO) on the establishment and operation of the IDLO's Asia Pacific Regional Centre in Australia.

The Regulations accord international organisation status to the IDLO and extend certain non-financial privileges (for example, exemption from currency and exchange restrictions) and immunities from legal process to the IDLO and its staff.

The Regulations commenced on 18 April 2007.

³⁴ [1958] ATS 5.

29. Regulations made under the International Transfer of Prisoners Act 1997

The International Transfer of Prisoners Act 1997 forms the basis for the International Transfer of Prisoners scheme in Australia. The scheme allows Australians imprisoned overseas to apply to return to Australia to serve the remainder of their sentence in an Australian prison. The scheme also allows foreign nationals who are imprisoned in Australia to apply to serve the balance of their sentence in their home country.

Section 8 of the Act provides, in part, that the regulations may apply the Act to a foreign country and may declare that country to be a transfer country for the purposes of the Act. The regulations may also declare that the Act applies in relation to such a foreign country subject to limitations, conditions, exception or qualifications referred to in the regulations. These may include limitations, conditions, exceptions and qualifications to give effect to a bilateral treaty.

International Transfer of Prisoners (Cambodia) Regulations 2007 (SLI 2007 No 6)

These Regulations declare that Cambodia is a ‘transfer country’, and apply the Act to Cambodia subject to the Agreement between the Government of Australia and the Government of the Kingdom of Cambodia concerning Transfer of Sentenced Persons³⁵ (the Agreement). These Regulations are intended to give effect to the Agreement for the purposes of Australia’s requirements for ratification of treaties.

These Regulations commenced on 14 April 2007, on the date the Agreement entered into force.

International Transfer of Prisoners (Military Commission of the United States of America) Regulations 2007 (SLI 2007 No 79)

The International Transfer of Prisoners (Military Commission of the United States of America) Regulations 2007 are intended to give effect to the Arrangement between the Government of Australia and the Government of the United States of America on the Transfer of Prisoners Sentenced by United States Military Commissions Established Pursuant to the Military Commissions Act of 2006 and the United States Code and on Co-operation in the Enforcement of Sentences Imposed by those Military Commissions (the Arrangement).

The Regulations apply the Act to the United States, subject to the Arrangement, in the case of a transfer to Australia of a prisoner serving a sentence ordered by a United States military commission.

These Regulations commenced on 30 March 2007.

³⁵ [2009] ATS 4.

International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Amendment Regulations 2007 (No 1) (SLI 2007 No 80)

The International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Regulations 2002 (the Principal Regulations) declare that States Parties to the Council of Europe Convention on the Transfer of Sentenced Persons³⁶ (the Convention), including the United States of America, are ‘transfer countries’ and apply the Act to those States Parties, subject to the Convention.

The International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Amendment Regulations (No 1) (the Amendment Regulations) amend the Principal Regulations to provide that the Act applies to the United States subject to the Convention, other than in relation to the transfer to Australia of a person serving a sentence of imprisonment ordered by a United States military commission. Transfer of persons sentenced by United States military commissions is regulated by the International Transfer of Prisoners (Military Commission of the United States of America) Regulations 2007.

These Regulations commenced on 30 March 2007.

30. Regulations made under the Migration Act 1958

Migration Amendment Regulations 2007 (No 1) (SLI 2007 No 69)

These Regulations amend the Migration Regulations 1994.

The amendments reflect obligations under the Agreement between the Government of Australia and the Government of the Republic of the Philippines Concerning the Status of Visiting Forces of Each State in the Territory of the Other State.³⁷ This agreement is not yet in force. Article 4(1) of the agreement provides that the Government of the receiving state shall facilitate the admission and departure of the members of the visiting force and its civilian component. Schedule 4 of the Regulations adds the Republic of the Philippines to the list of countries whose forces members and forces civilian component members hold a special migration status by virtue of a Status of Forces Agreement with Australia.

Regulations 1 to 6 and Schedules 1 to 4 commenced on 23 April 2007. Regulation 7 and Schedule 5 commenced on 1 July 2007.

Migration (United Nations Security Council Resolutions) Regulations 2007 (SLI 2007 No 167)

These Regulations repeal existing Regulations dealing with travel sanctions imposed by various United Nations Security Council Resolutions, and replace them with a single set of Regulations.

The four sets of Regulations which are repealed by these regulations are:

- the Migration (Sierra Leone – United Nations Security Council Resolution No 1171) Regulations 1997;

³⁶ [2003] ATS 6.

³⁷ (31 May 2007), [2007] ATNIF 14.

- the Migration (Liberia – United Nations Security Council Resolutions) Regulations 2001;
- the Migration (Afghanistan – United Nations Security Council Resolution No 1390) Regulations 2002; and
- the Migration (Côte d’Ivoire – United Nations Security Council Resolutions) Regulations 2005.

The repealed Regulations imposed travel sanctions based on resolutions made by the United Nations Security Council. The new Regulations incorporate all of the existing travel sanction resolutions and enable new travel sanction resolutions to be incorporated as required by way of legislative instrument.

These Regulations commenced on 1 July 2007.

31. Mutual Assistance in Criminal Matters (The People’s Republic of China) Regulations 2007 (SLI 2007 No 7)

The Regulations are intended to give effect to the Treaty between the Government of Australia and the Government of the People’s Republic of China on Mutual Legal Assistance in Criminal Matters (the Treaty).³⁸ The Treaty obliges Australia and China to provide each other with mutual assistance in criminal matters including: search and seizure, service of documents, taking of evidence, arranging for witnesses to give evidence or to assist in investigations and the location, restraint and forfeiture of instruments and proceeds of crime.

The Regulations commenced on 28 March 2007, on the date the Treaty entered into force.

32. Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2007 (No 1) (SLI 2007 No 97)

Section 70 of the Nuclear Non-Proliferation (Safeguards) Act 1987 provides that powers, duties, functions or discretions under the Act are to be exercised in accordance with specified international agreements identified in the Act, or prescribed in regulations. These regulations update the list of such international agreements. The amendments refer to:

- amendments to the Convention on Physical Protection of Nuclear Material (8 July 2005);³⁹
- an Exchange of Notes dated 23 November 2006⁴⁰ constituting an Agreement between Australia and Japan to amend the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy of 5 March 1982 (the Cooperation Agreement);⁴¹
- an Exchange of Notes dated 1 August 2000 constituting an Agreement between the Government of Australia and the Government of Japan to

³⁸ [2007] ATS 21

³⁹ [2006] ATNIF 14.

⁴⁰ [2006] ATS 18.

⁴¹ [1982] ATS 22.

further amend the Exchange of Letters constituting an Agreement establishing an Implementing Arrangement pursuant to the Cooperation Agreement;⁴²

- an Exchange of Notes dated 10 September 1999 constituting an Agreement between the Government of Australia and the Government of Japan to further amend the Exchange of Letters constituting an Agreement establishing an Implementing Arrangement pursuant to the Cooperation Agreement;⁴³
- the Agreement between Australia and the Argentine Republic concerning Cooperation in the Peaceful Uses of Nuclear Energy;⁴⁴
- the Agreement between the Government of Australia and the Government of the People's Republic of China on the Transfer of Nuclear Material;⁴⁵ and
- the Agreement between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy.⁴⁶

These Regulations commenced on 1 May 2007

33. Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2007 (No 2) (SLI 2007 No 335)

Under the Montreal Protocol on Substances that Deplete the Ozone Layer⁴⁷ (the Protocol) States parties are obliged to ensure that stocks of methyl bromide are only sold and used for authorised purposes.

The Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 (the Principal Regulations) regulate the supply and end use of non-quarantine and pre-shipment methyl bromide through record keeping and reporting systems. The amending Regulations make minor administrative amendments to the Principal Regulations regarding the operation of methyl bromide and in the existing regulatory arrangements for the refrigeration and air conditioning sectors to ensure coverage of all relevant gases and technologies.

The Regulations commenced on 1 January 2008.

34. Regulations under the Quarantine Act 1908

The Quarantine Act 1908 requires, in part, masters of overseas vessels or installations (man made structures that can be used for activities such as tourism, marine archaeology or exploring natural resources) to provide prescribed information before arrival or departure, as appropriate. Subregulation 10(1) of the

⁴² [2000] ATS 31.

⁴³ [1999] ATS 30.

⁴⁴ [2005] ATS 5.

⁴⁵ [2007] ATS 3.

⁴⁶ [2007] ATS 4.

⁴⁷ [1989] ATS 18.

Quarantine Regulations 2000 (the Principal Regulations) sets out the prescribed pre-arrival information that must be provided by masters of overseas vessels and installations. Regulation 11 of the Principal Regulations prescribes the period within which the prescribed information must be given.

Quarantine Amendment Regulations 2007 (No 2) (SLI 2007 No 233)

The Regulations amend the Principal Regulations to improve the quality of information, the effectiveness of the offences provisions and the ability of the Australian Quarantine and Inspection Service (AQIS) to respond to any quarantine risks under the Quarantine Act 1908.

The Regulations make a number of definitional amendments by updating references to the International Health Regulations (2005). While the International Health Regulations (2005) are in force from 15 June 2007, there is an additional period of five years from this date for member states to further develop core capacities in surveillance and responses at border crossings.

The Regulations vary the information that the master of a vessel or installation is required to provide in relation to the quarantine status of the ship or installation prior to its arrival at an Australian port. This includes, amongst other things, increasing the time in which a master of a vessel or installation is required to provide the pre-arrival information prescribed in the Principal Regulations from between 48 and 12 hours before the estimated time of arrival of the vessel or installation to between 96 hours and 12 hours before that estimated time.

The Regulations commenced on 12 September 2007.

Quarantine Amendment Regulations 2007 (No 3) (SLI 2007 No 341)

The Regulations amend the Principal Regulations to authorise the issuing of Ship Sanitation Control Exemption Certificates and Ship Sanitation Control Certificates. These amendments implement Australia's obligation under Article 39 of the World Health Organisation's International Health Regulations (2005),⁴⁸ which require that "Ship Sanitation Control Exemption Certificates and Ship Sanitation Control Certificates shall be valid for a maximum period of six months." The new ship sanitation certification program updates the existing de-ratting certification program which was required by the World Health Organisation's International Health Regulations (1969).

The Regulations commenced on 15 December 2007.

35. Regulations made under the Social Security (International Agreements) Act 1999

Subsection 8(1) of the Social Security (International Agreements) Act 1999 provides that a Schedule setting out the terms of an agreement between Australia and another country may be added to the Act by regulations, if the agreement relates to reciprocity in social security matters.

⁴⁸ [2007] ATS 29.

***Social Security (International Agreements) Act 1999 Amendment
Regulations 2007 (No 1) (SLI 2007 No 144)***

The Regulations insert the Agreement with the Swiss Confederation on Social Security⁴⁹ (the Agreement) as new Schedule 20 to the Social Security (International Agreements) Act 1999.

The Agreement coordinates the social security schemes of Australia and Switzerland to give better welfare protection for people who move between the two countries. The Agreement enables Australian citizens with contribution records in Switzerland living in Australia to claim and qualify for part pensions from the Swiss Federal Council.

Former Australian residents living in Switzerland may be able to claim and qualify for a part Australian pension. The Agreement also includes provisions modifying Australia's Superannuation Guarantee arrangements to avoid double coverage of Swiss employees seconded to work temporarily in Australia. Reciprocal exemptions are provided for Australian workers seconded to work temporarily in Switzerland.

These Regulations commenced on the date the Agreement entered into force for Australia, 1 January 2008.

***Social Security (International Agreements) Act 1999 Amendment
Regulations 2007 (No 2) (SLI 2007 No 352)***

The Regulations insert new Schedules into the Social Security (International Agreements) Act 1999 for the following agreements:

- Agreement with the Federal Republic of Germany on Social Security to Govern Persons Temporarily Employed in the Territory of the Other State (Supplementary Agreement)⁵⁰ within Schedule 14 to the Act;
- Agreement on Social Security with Republic of Korea⁵¹ as new Schedule 21 to the Act; and
- Agreement with the Hellenic Republic (Greece) on Social Security⁵² as new Schedule 22 to the Act.

The Supplementary Agreement with Germany contains provisions to avoid double coverage to ensure that contributions do not need to be made into both countries' compulsory pension or superannuation systems for employees who are seconded to work temporarily in the other country.

The Agreement with Korea seeks to coordinate the social security schemes of the two countries to give better welfare protection for people who move between Australia and Korea. Under the Agreement, both countries agree to recognise pension rights for people who move between Australia and Korea. The Agreement

⁴⁹ [2008] ATS 1.

⁵⁰ [2008] ATS 13.

⁵¹ [2008] ATS 11.

⁵² [2008] ATS 14.

with Korea covers Australian age pensions and Korean old age pensions and lump sum refunds. Eligible former residents of Australia can claim Australian age pensions without leaving Korea and people who worked in Korea now living in Australia will be able to lodge claims for Korean pensions. The Agreement with Korea also includes provisions covering Australia's Superannuation Guarantee scheme — eliminating the need for compulsory contributions into both countries' systems in respect of the same work when employees are sent to work temporarily in the other country.

The Agreement with Greece seeks to coordinate the social security schemes of the two countries to give better welfare protection for people who move between Australia and Greece. Under the Agreement, both countries agree to recognise pension rights for people who move between Australia and Greece. The Agreement with Greece covers Australian and Greek Age Pensions. Eligible persons of Age Pension age will be able to claim an Age Pension in either country and eligible pensioners can continue to receive that pension indefinitely in either country as long as they remain otherwise qualified. The Agreement with Greece also includes provisions covering Australia's Superannuation Guarantee scheme — eliminating the need for compulsory contributions into both countries' systems in respect of the same work when employees are sent to work temporarily in the other country.

The Schedules to these Regulations containing amendments relating to each Agreement commenced on the dates the respective Agreements entered into force. All three Agreements entered into force on 1 October 2008.