Australian Legislation Concerning Matters of International Law 2008

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Commonwealth Statutes

1. Aviation Legislation Amendment (2008 Measures No 1) Act 2008 (No 86 of 2008)

The Act amends the Aviation Transport Security Act 2004 and Civil Aviation Act 1988. The purpose of the Act is to strengthen aviation security and safety. The Act enables regulations to be made under the Aviation Transport Security Regulations 2005 to permit Air Security Officers to lawfully discharge their firearms on board an aircraft in Australian territory or an Australian aircraft in foreign territory. Under Annex 17 of the Convention on International Civil Aviation (the Chicago Convention), [1] the carriage of weapons on board aircraft requires special authorisation, in accordance with the laws of the States involved.

The Act commenced on 20 September 2008.

2. Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008 (No 79 of 2008)

This Act inserts a new Part IA into the Civil Aviation (Carriers' Liability) Act 1959 and amends the Air Accidents (Commonwealth Government Liability) Act 1963 and the Civil Aviation Act 1988. It implements—and thus enables Australia to accede to—the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention).[2]

The Act amends the legislative framework for the liability of air carriers for: the death or injury of a passenger; loss or damage to cargo and baggage; and damage caused by a delay in the scheduled arrival of a passenger, baggage or cargo in the course of international air carriage. The objective of the amendments is to:

- provide for equitable compensation for death or injury to passengers, or damage to baggage or cargo, that occur in international air carriage, and
- facilitate the efficient operation of international carriage by air of passengers, baggage and cargo.

1 [1957] ATS 5.

2 [2009] ATS 3.

The Act enables regulations to be made to increase insurance levels for air carriers conducting international carriage to and from Australia, and to increase the liability limits for Australian international carriers. Article 24 of the Montreal Convention provides for five-yearly reviews of liability limits to account for inflation. Under the Act, any updates to the liability limits under the Montreal Convention will automatically apply to Part IA. Finally, the Act allows for any amendments to the Montreal Convention to which Australia becomes a Party to be given the force of law by inserting the text of the amendment into the relevant regulations.

Schedules 1 and 2 of the Act commenced on 24 January 2009. The remaining provisions of the Act commenced on 12 July 2008.

3. Cross-Border Insolvency Act 2008 (No 24 of 2008)

In May 1997, the United Nations Commission on International Trade Law (UNCITRAL) adopted a Model Law on Cross-Border Insolvency.[3] The object of the Model Law is to provide efficient and effective mechanisms for dealing with cross-border insolvency. The Act adopts the Model Law in a form adapted to the Australian context. The Act:

- provides people that administer foreign insolvency proceedings with access to Australian courts;
- sets out the conditions for recognition of a foreign insolvency proceeding and for granting relief to the representatives of such a proceeding;
- enables foreign creditors to participate in local insolvency proceedings;
- facilitates cooperation between courts and insolvency practitioners from different countries; and
- establishes a legislative framework for coordinating insolvency proceedings that are taking place concurrently in another country.

The Model Law is included in Schedule 1 to the Act.

Schedule 1 and Parts 2, 3 and 4 of the Act commenced on 1 July 2008. The remaining provisions of the Act commenced on 26 May 2008.

4. Customs Amendment (Strengthening Border Controls) Act 2008 (No 74 of 2008)

This Act extends the search and seizure powers of Customs officers with respect to ships within Australia's jurisdiction, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).[4] These search and seizure powers extend not only to customs legislation but also to other Commonwealth legislation. The scope of Australia's maritime enforcement powers and the circumstances under which they may be exercised depend on Australia's jurisdiction in its various

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3 The Model Law is set out in the Annex to United Nations General Assembly Resolution A/RES/52/158 (1997).

4 [1994] ATS 31.

maritime zones, including the territorial sea, the contiguous zone and the safety zones around Australian resources installations or Australian sea installations, and the exclusive economic zone.

The Act enables Customs officers to board ships suspected of being involved in contraventions of the Customs Act 1901, Criminal Code Act 1995, Migration Act 1958, Fisheries Management Act 1991 and any other prescribed Act that Australia may enforce consistently with UNCLOS. Where such a boarding occurs, the Act allows Customs officers to search for, examine, take possession of and retain items that may be:

- a weapon;
- used to help a person escape detention; or
- evidence of an offence against the prescribed Acts.

Finally, the Act allows Customs officers to arrest without warrant any person found on the ship who is reasonably suspected of being involved in an offence against one or more of the prescribed Acts.

Schedule 1 of the Act commenced on 12 January 2009. Schedule 2 of the Act commenced on 9 August 2008. The remaining provisions commenced on 12 July 2008.

5. Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008 (No 127 of 2008)

This Act amends the Customs Act 1901 in order to give effect to Australia's obligations under the Australia-Chile Free Trade Agreement (the Agreement).[5]

The Act inserts new rules into Part VIII of the Customs Act (which deals with the payment of customs duties) to determine whether goods imported into Australia from Chile are 'Chilean originating goods' that are eligible for preferential rates of customs duties under the Customs Tariffs Act 1995. The definition of 'Chilean originating goods' accords with the rules of origin set out in Chapter 4 of the Agreement.

The Act further amends Part VI of the Customs Act to enable the making of regulations that impose record keeping requirements on persons exporting 'Australian originating goods' to Chile. In particular, such regulations may permit records or information obtained by Australian officials to be disclosed to Chilean customs officials.

The amendments apply to goods imported from Chile, or exported to Chile, after 6 March 2009 (being the day on which the Agreement entered into force), as well as to goods imported before 6 March 2009, where the time for calculating the import duty on the goods occurred after this date.

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5 [2009] ATS 6.

6. Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008 (No 128 of 2008)

This Act amends the Customs Tariff Act 1995 in order to give effect to Australia's obligations under the Australia-Chile Free Trade Agreement. The amendments ensure that free or preferential rates of customs duty apply to 'Chilean originating goods', as defined in the Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008. It further provides for the preferential rates of customs duty for certain Chilean originating goods to be phased to free by 2015. The amendments insert a new Schedule 7 into the Customs Tariff Act 1995 to prescribe the new rates of duty.

The amendments apply to goods imported from Chile after 6 March 2009 (being the day on which the Agreement entered into force), as well as to goods imported before 6 March 2009 where the time for calculating the import duty on the goods occurred after this date.

7. Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008 (No 36 of 2008)

This Act amends the Fisheries Management Act 1991 in order to enhance Australia's ability to combat illegal, unregulated and unreported (IUU) fishing, consistently with Australia's rights and obligations under international fisheries management agreements and under UNCLOS.

Previously, the Fisheries Management Act (sections 87A to 87F) empowered Australian fisheries officers to take enforcement action (such as boarding and inspection) in relation to certain foreign boats on the high seas that were flagged to Parties to:

- the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement);[6] and
- the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean[7]

and were fishing for stocks covered by those treaties.

The amendments in Schedule 3 of the Act extend the existing scheme to permit the enforcement of measures adopted by other international fisheries management organisations and arrangements to which Australia is Party, such as the Commission for the Conservation of Antarctic Marine Living Resources

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6 [2001] ATS 8.

7 [2004] ATS 15.

(CCAMLR).[8] The organisations covered by the new scheme and the measures to be enforced will be prescribed in regulations.

The amendments in Schedule 3 also create various offences in relation to the contravention of prescribed measures by Australian and foreign nationals on the high seas and by Australian nationals on a foreign boat in foreign waters. The Attorney-General's consent is required for the prosecution of foreign nationals. Schedule 3 empowers Australian officers to exercise enforcement powers in relation to suspected offences involving foreign boats on the high seas where the flag State of the boat so authorises. Such authorisation could be given on an *ad hoc* basis or on the basis of a standing agreement or arrangement (such as a boarding and inspection regime established by treaty).

The amendments inserted by Schedule 4 clarify the existing provisions of the Fisheries Management Act relating to the hot pursuit of vessels that are fishing illegally in the Australian Fishing Zone (AFZ) or providing support to foreign boats fishing illegally in the AFZ. The amendments confirm that enforcement powers under section 84 of that Act may be exercised at any place outside the AFZ (but not within the territorial sea of another country), including in the waters of other countries' exclusive economic zones, following a hot pursuit.

Schedules 3 and 4 of the Act commenced on 24 June 2009 and 22 July 2008 respectively.

8. Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008 (No 125 of 2008)

The Act amends the Great Barrier Reef Marine Park Act 1975 (the 1975 Act) to better implement Australia's international obligations to protect the Great Barrier Reef Marine Park, which is listed as a World Heritage Area and has been designated as a "Particularly Sensitive Sea Area" by the International Maritime Organization (IMO).[9]

Heritage obligations

The amendments establish a new objects section into the 1975 Act, specifying that the primary object of the Act is the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region. A subsidiary object of the Act is to assist in meeting Australia's international responsibilities relating to the environment and the protection of world heritage.

The amendments also require the Great Barrier Reef Marine Park Authority (the Authority) to have regard to, and seek to act in a way that is consistent with,

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8 As established under the Convention on the Conservation of Antarctic Marine Living Resources [1982] ATS 9.

9 See IMO Resolution A.982(24) *Revised guidelines for the identification and designation of Particularly Sensitive Sea Areas (PSSAs)*; and in particular, IMO Resolution MEPC.133(53) of 22 July 2005, which approved the extension of the Great Barrier Reef Particularly Sensitive Sea Area (PSSA) to the Torres Strait.

the protection of the World Heritage values of the Great Barrier Reef World Heritage Area, including in the development of zoning plans for managing the Great Barrier Reef Marine Park. The amendments also establish that the Marine Park is a "matter of national environmental significance" under the EPBC Act, triggering assessment and approval requirements under that Act for actions that may have a significant impact on it.

Pollution offences

Schedule 6 of the Act amends existing offences relating to pollution in the Great Barrier Reef Marine Park, to better implement Australia's obligations as a member of the IMO and under the International Convention for the Prevention of Pollution from Ships 1973/78 (the MARPOL Convention).[10] The amendments include the adjustment of applicable penalty levels and the extension of vicarious and collective liability for certain offences. The changes also ensure consistency between the 1975 Act and the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, which is the primary legislation implementing Australia's obligations under the MARPOL Convention.

Schedules 1, 2 and 3 of the Act commenced on 26 November 2008. Schedules 4, 5 and 6 commenced on 25 November 2009. The remaining provisions commenced on 25 November 2008.

9. International Tax Agreements Amendment Act (No 1) 2008 (No 102 of 2008)

This Act amends the International Tax Agreements Act 1953 (the 1953 Act) and is intended to implement Australia's obligations under the Convention between Australia and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and its associated Protocol (the 2008 Convention).[11] The 2008 Convention prescribes rules for the avoidance of double taxation of income derived by persons who are residents of Australia and/or Japan and facilitates cooperation between Australia and Japan for the prevention of fiscal evasion (such as through the exchange of information). It replaces a previous treaty between Australia and Japan with respect to double taxation and fiscal evasion, concluded in 1969.[12]

The amendments repeal the provisions in the 1953 Act that implemented Australia's obligations under the previous treaty and give the provisions of the 2008 Convention the force of law (subject to the Act). Consistent with Australia's general practice that tax treaties appear as Schedules to the 1953 Act, the text of the renegotiated 2008 Convention is inserted as Schedule 6.

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10 [1988] ATS 29.

11 [2008] ATS 21.

12 Agreement between the Government of the Commonwealth of Australia and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the protocol to that agreement [1970] ATS 9.

The Act commenced on 3 October 2008.

10. International Tax Agreements Amendment Act (No 2) 2008 (No 111 of 2008)

This Act amends the International Tax Agreements Act 1953 (the 1953 Act) and is intended to implement Australia's obligations under the Protocol amending the Agreement between the Government of Australia and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (the Protocol).[13]

The Protocol amends Australia's most favoured nation (MFN) obligations under the existing Agreement with South Africa to include new rules to protect taxpayers of one country operating in another country from discriminatory practices. The Protocol makes other minor amendments to the existing Agreement, such as aligning capital gains treatment and withholding tax rate limits for dividends and royalties more closely with international practice.

The amendments give the provisions of the Protocol the force of law (subject to the Act). Consistent with Australia's general practice that tax treaties appear as Schedules to the 1953 Act, the text of the Protocol is inserted as Schedule 42A.

The Act commenced on 31 October 2008.

11. Migration Legislation Amendment Act (No 1) 2008 (No 85 of 2008)

This Act amends the Australian Citizenship Act 2007 (the Citizenship Act) to better implement Australia's obligations pursuant to the United Nations Convention on the Reduction of Statelessness.[14]

Section 16 of the Citizenship Act provides the eligibility criteria for citizenship by descent and includes a requirement that the Minister must be satisfied that an applicant for citizenship is of good character (if the person is 18 years of age or over at the time of application). The Act amends section 16 to ensure that stateless persons (persons who have never been nationals or citizens of any country) are not required to meet this good character requirement.

This is consistent with section 21 of the Citizenship Act, which does not apply the good character requirement to stateless persons seeking citizenship by conferral, and also accords with Australia's obligations under Article 4 of the Convention. Article 4 requires States to grant nationality to persons born outside of their territory and who would otherwise be stateless, subject to certain conditions that may be prescribed in national law. These conditions do not include a good character requirement.

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13 [2008] ATS 18.

14 [1975] ATS 46.

The Act also makes various amendments to the eligibility requirements for citizenship by conferral in section 21 of the Citizenship Act. The amendments ensure that the Minister must be satisfied of a person's status as stateless at the time of making a decision on the person's citizenship application (and not at the time the application was made). They also replace the previous requirement that the Minister be satisfied that an applicant has *never had reasonable prospects* of acquiring the nationality or citizenship of another country with the less onerous requirement that the applicant *is not entitled* to acquire such nationality or citizenship. These amendments are consistent with Australia's obligations under the Convention.

The amendments commenced on 7 October 2008.

12 Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008 (No 117 of 2008)

This Act establishes a system of offshore titles to authorise the transportation by pipeline and injection and storage of greenhouse gas substances in deep geological formations under the seabed. The Act also modifies the existing petroleum title regime in order to accommodate the new kinds of activity authorised by the Act.

The greenhouse gas injection licences introduced by the Act authorise the injection and storage of greenhouse gas substances. 'Greenhouse gas substances' are carbon dioxide and any substances incidentally derived from the capture, transportation or injection processes, with the permitted or required addition of chemical detection agents. Regulations may be made to expand the meaning of 'greenhouse gas substance' if necessary, such as where the London Protocol is amended to permit geological storage of other greenhouse gases.

The Act introduces the following greenhouse gas titles:

- a greenhouse gas assessment permit;
- a greenhouse gas holding lease;
- a greenhouse gas injection licence;
- a greenhouse gas search authority;
- a greenhouse gas special authority; and
- an infrastructure licence for greenhouse gas-related activities.

The new greenhouse gas titles are located in the area between the outer limits of the State and Northern Territory (3 nautical mile) coastal waters and the outer limit of the Australian continental shelf, consistently with Australia's rights and obligations under UNCLOS.

The amendments accord with Australia's obligations under the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter[15] (the London Convention) and the Protocol to the London Convention[16] (the London

15 [1985] ATS 16.

16 [2006] ATS 11.

Protocol), which will eventually replace the London Convention. The London Protocol places a general prohibition on the dumping of ocean waste and requires Parties to take effective measures to reduce and, where practicable, eliminate pollution caused by dumping into the sea. Annex 1 of the Protocol provides that carbon dioxide streams from carbon dioxide capture processes for sequestration are an exception to this general prohibition on dumping.

Schedules 1, 2, 3 and 4 of the Act commenced on 22 November 2008. The remaining provisions of the Act commenced on 21 November 2008.

13. Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008 (No 76 of 2008)

This Act implements the International Convention on Civil Liability for Bunker Oil Pollution Damage (the Bunker Oil Convention).[17] The Bunker Oil Convention establishes a liability and compensation regime in relation to pollution damage following the escape or discharge of bunker oil from a ship (other than an oil tanker). The Act provides that:

- shipowners are strictly liable for pollution damage resulting from the escape or discharge of bunker oil from their ships;
- shipowners can limit their liability;
- the limits of liability depend on the size of the relevant ship;
- ships with a gross tonnage greater than 1,000 must be insured to cover the liability of the shipowner for pollution damage resulting from the escape or discharge of bunker oil. Such ships must also carry evidence of their insurance; and
- people suffering from pollution damage can seek compensation directly from the insurer of a shipowner, rather submitting the claim to the shipowner.

Sections 3–30 of the Act commenced on 16 June 2009. The remaining provisions commenced on 12 July 2008.

14. Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) (Consequential Amendments) Act 2008 (No 77 of 2008)

The purpose of this Act is to amend the Admiralty Act 1988, the Protection of the Sea (Civil Liability) Act 1981 and the Protection of the Sea (Powers of Intervention) Act 1981, consequent upon the enactment of the Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008, which gives effect to the Bunker Oil Convention.

Schedule 1 of the Act commenced on 16 June 2009. The remaining provisions commenced on 12 July 2008.

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17 [2009] ATS 14.

15. Protection of the Sea Legislation Amendment Act 2008 (No 94 of 2008)

The Act amends the law relating to the protection of the sea from pollution to implement two treaties: the 2003 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Supplementary Fund Protocol)[18] and amendments to Annexes I,[19] III[20] and IV[21] of (MARPOL).[22]

The Supplementary Fund Protocol

The International Convention on Civil Liability for Oil Pollution Damage[23] and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage[24] establish an international liability and compensation regime for pollution damage from oil spills from oil tankers. These treaties establish a two-tiered system in which compensation for damages is paid in the first instance by shipowners and their insurers. If the damage exceeds the available funds from these sources, the outstanding compensation is provided by the International Oil Pollution Compensation Fund. Under this scheme, the maximum amount of compensation available for a single incident is 203 million Special Drawing Rights (SDR).[25]

The Supplementary Fund Protocol creates a third tier of compensation, substantially increasing the maximum amount payable up to 750 million SDR. It was adopted by the IMO in 2003 following several high profile accidents involving oil tankers.

Schedule 1 of the Act makes amendments to the following pieces of legislation in order to meet Australia's obligations under the Supplementary Fund Protocol:

- the Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund — Customs) Act 1993;
- the Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund — Excise) Act 1993;
- the Protection of the Sea (Imposition of Contributions to Oil Pollution Compensation Fund — General) Act 1993; and

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18 [2005] ATNIF 21. The Supplementary Fund Protocol entered into force generally on 3 March 2005. Australia deposited its instrument of accession with the IMO on 13 July 2009, but the Protocol is not yet in force for Australia.

19 [2007] ATS 19.

20 [1995] ATS 4.

21 [1998] ATS 29.

22 International Convention for the Prevention of Pollution from Ships.

23 [1984] ATS 3.

24 [1995] ATS 2.

25 The value of the SDR varies from day to day in accordance with changes in currency values. The daily rates for SDR can be found on the IMF website at < www.imf.org/>.

- the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993.

MARPOL amendments

Australia has implemented the six technical Annexes of MARPOL, which impose obligations on States to prevent pollution by the discharge of oil, noxious liquid substances in bulk, harmful packaged substances, sewage, garbage and air pollution from ships. MARPOL is given effect in Australia in the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (PPS Act) and the Navigation Act 1912.

Schedule 2 of the Act amends the Navigation Act 1912 and the PPS Act to give effect to changes to Annexes III and IV of MARPOL (on pollution from harmful packaged substances and sewage) adopted by the IMO in October 2006 and July 2007 respectively.[26] The revisions to Annex III, which entered into force on 1 January 2010, harmonise the definition of marine pollutants with that adopted by the UN Transport of Dangerous Goods Sub-Committee, based on the United Nations Globally Harmonized System of Classification and Labelling of Chemicals. The revisions to Annex IV, which entered into force on 1 December 2008, extended an existing provision regarding the discharge of sewage to include sewage originating from spaces containing living animals.

Schedule 2 also amends the PPS Act to more closely align it with Annex I of MARPOL, by inserting a new subsection 9(4) that better reflects the defences to liability for oil discharges contained in Regulations 15 and 34 of Annex I.

The provisions of the Act relating to the Supplementary Fund Protocol commenced on 13 October 2009. The provisions of the Act relating to the changes to Annex I, Annex III and Annex IV of MARPOL commenced on 3 October 2008, 1 January 2010 and 1 December 2008 respectively.

16. Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) Act 2008 (No 144 of 2008)

This Act amends 68 Commonwealth Acts to eliminate discrimination on the ground of sexual preference. The amendments ensure that the relevant Commonwealth laws recognise same-sex de facto and registered relationships to the same extent as opposite-sex de facto relationships. The amendments also provide functional recognition to the children of same-sex relationships, so that such children have the same rights and duties as children of opposite-sex relationships. To this end, the Act amends a number of definitions across Commonwealth legislation, including:

- a new model definition of ‘de facto partner’ to apply equally to same and opposite-sex de facto couples; and

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26 Annex III of MARPOL (Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) [1995] ATS 4, Annex IV of MARPOL (Prevention of Pollution by Sewage from Ships) [1998] ATS 29.

- expanded definitions of 'child' and 'parent' to include the children of same-sex couples, where appropriate.

The Act also amends the Sex Discrimination Act 1984 to list the treaties that are relied upon under Article 51(xxix) (the external affairs power) of the Constitution as the basis for section 14(3A) of that Act. Section 14(3A) prohibits employers discriminating against an employee by dismissing that employee on the ground of his or her family responsibilities. The Act clarifies that subsection 14(3A) has effect to the extent that it implements Australia's responsibilities under the following treaties:

- the International Covenant on Civil and Political Rights (ICCPR).[27] Article 2(1) requires Parties not to discriminate in the application of the rights recognised in the ICCPR. Article 26 protects the right to equality before the law and the right to the equal protection of the law without any discrimination. Discrimination on the ground of sexual preference is considered to be prohibited by these provisions;
- the International Covenant on Economic, Social and Cultural Rights (ICESCR).[28] Article 2(2) prohibits discrimination in implementing the rights contained in ICESCR, on the same list of grounds as Article 2(1) of the ICCPR. Discrimination on the ground of sexual preference is considered to be prohibited by this provision;
- the Discrimination (Employment and Occupation) Convention, 1958 adopted by the General Conference of the International Labour Organization on 25 June 1958 (ILO 111),[29] which requires Parties to pursue policies designed to eliminate discrimination in respect of employment and occupation. Under the Convention, discrimination includes distinctions that are declared by Parties to it. Sexual preference has been declared as such a distinction in the Human Rights and Equal Opportunity Commission Regulations 1989; and
- the Convention on the Rights of the Child (CRC).[30] Article 5 requires Parties to respect the rights, responsibilities and duties of parents, legal guardians or other persons legally responsible for a child. Article 18(2) calls on Parties to provide assistance to parents and legal guardians in the performance of their child-rearing responsibilities. These provisions apply equally to parents and legal guardians of both genders and equally to those in same-sex and opposite-sex relationships.

The amendments commenced on 10 December 2008.

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27 [1980] ATS 23.

28 [1976] ATS 5.

29 [1974] ATS 12.

30 [1991] ATS 4.

17. Same-Sex Relationships (Equal Treatment in Commonwealth Laws — Superannuation) Act 2008 (No 134 of 2008)

This Act amends the Commonwealth legislation that governs the civilian and military (defined benefit) superannuation schemes; the parliamentary, judicial and statutory legal officer pension schemes; and the pension scheme for the Governor-General. The amendments eliminate discrimination against same-sex couples and the children of same-sex relationships in various Acts that provide for reversionary superannuation benefits upon the death of a superannuation scheme member, and in related taxation treatment of superannuation benefits.

Prior to the Act, were a superannuation scheme member to die, his or her same-sex partner or a child of such a relationship would not be entitled to receive reversionary death benefits. The amendments enable death benefits to be conferred on de facto same-sex partners and children of a same-sex relationship, and also confer the same entitlement on children of opposite-sex relationships.

The amendments give effect to Australia's non-discrimination obligations in Article 2(1) of the ICCPR, which requires States Parties to ensure that the rights contained therein are recognized without distinction on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Human Rights Committee has interpreted 'other status' in Article 26 to include sexual orientation.[31]

The Act commenced on 4 December 2008.

18. Screen Australia Act 2008 (No 12 of 2008)

The purpose of this Act is, amongst other things, to establish Screen Australia. In doing so, section 3 of the Act defines an 'Australian program' as a program: (a) that, in the opinion of Screen Australia, has, or will have, a significant Australian content; or (b) that has been, or is to be, made in pursuance of an agreement entered into between the Commonwealth or an authority of the Commonwealth and the Government of another country or an authority of the Government of another country.

Section 3 of the Act commenced on 1 July 2008.

19. Transport Security Amendment (2008 Measures No 1) Act 2008 (No 138 of 2008)

This Act amends the Maritime Transport and Offshore Facilities Security Act 2003 and the Aviation Transport Security Act 2004. These Acts are intended to safeguard against unlawful interference with maritime transport and offshore facilities and aviation respectively, in accordance with Australia's obligations under the IMO's International Ship and Port Facility Security Code;[32] Chapter XI-2 of

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31 Human Rights Committee, *Young v Australia* (Communication No 421/2000), 6 August 2003.

32 The International Ship and Port Facility Security Code (ISPS Code) is a

the Safety of Life at Sea Convention 1974 (SOLAS); [33] and the Chicago Convention.

The regulatory security frameworks for both the aviation and maritime sectors centre on the development of preventive security plans or programs, which set out security measures and procedures to be implemented to safeguard against acts of unlawful interference with aviation and maritime transport. The amendments in Schedule 1 of the Act confirm that participants in the maritime and aviation industries may hold multiple security plans, or programs, for different facilities and operations. Schedule 1 also amends the Maritime Transport and Offshore Facilities Security Act to, amongst other matters:

- clarify its application to foreign regulated ships visiting an external Australian territory;
- allow for maritime and offshore security plans to have a life span of five years or less (but not less than 12 months); and
- provide for regulations to develop nationally consistent mapping standards.

Schedule 1 of the Act commenced on 8 February 2009.

20. Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Act 2008 (No 81 of 2008)

The amendments made under this Act authorise the use of the Consolidated Revenue Fund for the initial payment of benefits and assistance to eligible overseas veterans and their dependants who are resident in Australia. This will permit the Repatriation Commission to act as the agent for other countries in providing pensions and health services for accepted disabilities, in accordance with international agreements and arrangements entered into pursuant to section 203 of the Veterans' Entitlements Act 1986. The amounts paid will then be reimbursed to the maximum extent possible by the relevant foreign Governments.

The amendments commenced on 13 July 2008.

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comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States. The ISPS Code is implemented through chapter XI-2 Special measures to enhance maritime security in the International Convention for the Safety of Life at Sea (SOLAS) 1974. The Code has two parts, one mandatory and one recommendatory.

33 [1983] ATS 22.

Commonwealth Regulations

21. Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008 (SLI 2008 No 2)

These Regulations amend the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Act) to improve and strengthen Australia's anti-money laundering and counter-terrorism financing (AML/CTF) system by ensuring that this system applies to managed investment schemes. The amendments implement the Forty Recommendations issued by the Financial Action Task Force on Money Laundering,[34] which were revised in June 2003 (the FATF Recommendations), and the Nine Special Recommendations on counter-terrorism financing, which were adopted following the terrorist attacks in the United States on 11 September 2001 (the Special Recommendations).[35]

The Regulations require those in the business of issuing interests, or issuing options to acquire an interest, in a managed investment scheme to comply with relevant obligations under the Act. These obligations include:

- verifying a customer's identity before providing a designated service to the customer;
- having an AML/CTF program in place;
- complying with record keeping obligations in respect of customer identification and in respect of their AML/CTF programs;
- reporting to the Australian Transaction Reports and Analysis Centre (AUSTRAC) suspicious matters and certain transactions above a threshold;
- reporting to AUSTRAC certain international funds transfer instructions, cross-border movements of physical currency above a threshold, and the cross-border movement of bearer negotiable instruments; and
- ensuring that electronic funds transfer instructions include certain information about the origin of the funds transferred.

The Regulations commenced on 30 January 2008.

22. Australian Radiation Protection and Nuclear Safety Amendment Regulations 2008 (No 1) (SLI 2008 No 234)

These Regulations amend the Australian Radiation Protection and Nuclear Safety Regulations 1999 (the Principal Regulations), which are made under the Australian Radiation Protection and Nuclear Safety Act 1998 (the Act).

The Principal Regulations contain references to Australian and international codes of practice and standards that provide for the safe handling of, dealing with

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34 The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

35 Financial Action Task Force, *FATF IX Special Recommendations*, October 2001.

or operation of controlled material, controlled apparatus and prescribed radiation facilities. The amendments update these references to reflect new or revised codes of practice and standards. Under section 14 of the Act, the CEO of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is required to take such international codes and standards into account before issuing a licence to a controlled person to deal with a controlled apparatus or controlled material or to undertake certain activities in relation to a controlled facility.

These Regulations commenced on 3 December 2008.

23. Aviation Transport Security Amendment Regulations 2008 (No 3) (SLI 2008 No 271)

The Regulations amend the Aviation Transport Security Regulations 2005 (the Principal Regulations) to permit an air security officer to lawfully discharge his or her weapon while on board a prescribed air service, if it is for the purpose of preventing, or responding to, an act of unlawful interference with aviation. Under Annex 17 of the Chicago Convention, the carriage of weapons on board aircraft requires special authorisation, in accordance with the laws of the States involved. Previously, the authority for air security officers to use their firearms on board aircraft was derived from legislative exemptions issued by the Civil Aviation Safety Authority (CASA). However, these exemptions expired after 30 June 2009.

The Regulations apply extraterritorially in relation to prescribed aircraft that are Australian aircraft, or aircraft (other than Australian aircraft) engaged in Australian international carriage. This ensures that if, for example, an aviation incident occurs on board an Australian aircraft while outside Australian territory, an on-duty air security officer is able to respond to the incident without the risk of prosecution under Australian law.

The Regulations commenced on 18 December 2008.

24. Civil Aviation Amendment Regulations 2008 (No 3) (SLI 2008 No 272)

The Regulations enable air security officers to lawfully discharge their firearms on board an aircraft in Australian territory or an Australian aircraft in foreign territory. Under Annex 17 of the Chicago Convention, the carriage of weapons on board aircraft requires special authorisation, in accordance with the laws of the States involved. Previously, the authority for air security officers to use their firearms on board aircraft was derived from legislative exemptions issued by the Civil Aviation Safety Authority (CASA). However, these exemptions expired after 30 June 2009.

The Regulations ensure that a defence is available to the prosecution of air security officers for the offence of discharging a firearm on board an aircraft under Regulation 144 of the Civil Aviation Regulations 1988.

These Regulations commenced on 20 December 2008.

25. Civil Aviation Amendment Regulations 2008 (No 4) (SLI 2008 No 273)

These Regulations amend the Civil Aviation Regulations 1988 to following the introduction of a new category of pilot licence by the International Civil Aviation Organization (ICAO) into Annex 1 of the Chicago Convention in November 2006. The 'Multi-crew Pilot (Aeroplane) Licence' is a specialised licence granted to airline co-pilots who have completed certain training and testing on the competencies of a co-pilot flying a heavy airliner in air transport and charter operations. Previously, such co-pilots were required to hold a commercial pilot (aeroplane) licence as a minimum, which involved training and checking for single pilot operations. Captains of airliners continue to be required to hold this higher license.

The Regulations insert a new Division on multi-crew pilot (aeroplane) licences into Part 5 of the Civil Aviation Regulations 1988. The new licence is available to aspiring airline co-pilots, to training organisations proposing to conduct multi-crew pilot training to local and overseas airlines and to airlines wishing to employ pilots holding the new licence.

The Regulations commenced on 19 December 2008.

26. Cross-Border Insolvency Regulations 2008 (SLI 2008 No 123)

The Regulations prescribe those entities that are excluded from the operation of the UNCITRAL Model Law on Cross-Border Insolvency, in accordance with section 9 of the Cross-Border Insolvency Act 2008. The object of the Model Law, which has the force of law in Australia, is to provide efficient and effective mechanisms for dealing with cross-border insolvency.

The prescribed entities are general insurers, life companies and authorised deposit-taking institutions. A general insurer is a body corporate that is authorised under the Insurance Act 1973 to carry on insurance business in Australia. A life company is life insurance business pursuant to the Life Insurance Act 1995. An authorised deposit-taking institution is defined in the Banking Act 1959.

These Regulations commenced on 2 July 2008.

27. Regulations made under the Charter of the United Nations Act 1945

Section 6 of the Charter of the United Nations Act 1945 (the Act) permits the making of regulations to give effect to sanctions (not involving the use of armed force) adopted by the United Nations Security Council (UNSC) under Chapter VII of the UN Charter, consistent with Australia's obligations under Article 25 of the UN Charter.[36]

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36 [1945] ATS 1.

Charter of the United Nations (Dealing with Assets) Regulations 2008 (SLI 2008 No 29)

These Regulations implement Australia's obligations to freeze assets and prevent assets being made available to all persons designated by the UNSC as being subject to such measures, either under Resolution 1373 (2001), which relates to terrorist acts, or under various country-specific resolutions. The Regulations repeal the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002, which previously implemented Resolution 1373.

The Regulations commenced on 24 March 2008.

Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2008 (SLI 2008 No 30)

These Regulations implement Australia's obligations under UNSC Resolution 1718 (2006) imposing sanctions against the Democratic People's Republic of Korea (DPRK). The sanctions imposed by the Regulations are:

- a prohibition on the export of military goods and goods related to the DPRK's nuclear, weapons of mass destruction (WMD) or ballistic missile programs, and the provision of related technical training;
- a prohibition on the procurement of such goods from the DPRK;
- a prohibition on the export of luxury goods to the DPRK; and
- an asset freezing regime applying to persons designated by the UNSC as being involved in the DPRK's nuclear, WMD or ballistic missile programs.

The Regulations repeal the Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2006, which previously implemented Australia's obligations under Resolution 1718 (2006).

The Regulations commenced on 24 March 2008.

Charter of the United Nations (Sanctions — Iran) Regulations 2008 (SLI 2008 No 31)

These Regulations implement Australia's obligations under UNSC Resolutions 1737 (2006), 1747 (2007) and 1803 (2008), imposing sanctions against Iran. The sanctions imposed by the Regulations are:

- a prohibition on the export of goods related to Iran's proliferation sensitive nuclear activities, goods mentioned in UNSC documents S/2006/814 and S/2006/815, and the provision of related technical training or financial assistance;
- a prohibition on the procurement of specified goods, including arms or related materiel, from Iran; and
- an asset freezing regime applying to persons designated in the Resolutions.

The Regulations repeal the Charter of the United Nations (Sanctions – Iran) Regulations 2007, which previously implemented Australia's obligations under Resolutions 1737 (2006) and 1747 (2007).

The Regulations commenced on 24 March 2008.

Charter of the United Nations (Sanctions — Iran) Amendment Regulations 2008 (No 1) (SLI 2008 No 109)

The purpose of the Regulations is to correct a drafting error in the Charter of the United Nations (Sanctions – Iran) Regulations 2008 (the Principal Regulations), which implement sanctions imposed by UNSC Resolutions 1737 (2006), 1747 (2007) and 1803 (2008) ("the Resolutions") on Iran.

The Resolutions specify three categories of export sanctioned goods, with each category subject to differing degrees of control. Relevantly, goods in the third category may be exported with the permission of the State, and do not require the prior approval of the Committee established by the UNSC under Resolution 1737 (2006).

Due to an oversight, the Principal Regulations had the effect that the Minister for Foreign Affairs could not authorise the export of goods in the third category to Iran, without the prior approval of the Committee. The Regulations amend the Principal Regulations to bring Australia's scheme for approval of export sanctioned goods to Iran into line with the Resolutions.

These Regulations commenced on 19 June 2008.

Charter of the United Nations (Sanctions — Afghanistan) Regulations 2008 (SLI 2008 No 41)

These Regulations implement Australia's obligations under UNSC Resolutions 1735 (2006), 1390 (2002) and 1267 (1999) ("the Resolutions"), imposing sanctions on Afghanistan. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms and related matériel, and related technical training or assistance, to Al-Qaida, Osama bin Laden, the Taliban, or other persons or entities associated with them (as designated in the Resolutions);
- an asset freezing regime applying to persons designated in the Resolutions (subject to some narrow exceptions); and
- a prohibition on designated persons from entering into, or transiting through, Australian territory.

The Regulations repeal the Charter of the United Nations (Sanctions – Afghanistan) Regulations 2001, which previously implemented Australia's obligations under the Resolutions.

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions) Amendment Regulations 2008 (No 1) (SLI 2008 No 42)

These Regulations amend the following three sets of regulations made under the Act:

- the Charter of the United Nations (Dealing with Assets) Regulations 2008 ("the Assets Regulations")
- the Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2008 ("the DPRK Regulations"); and
- the Charter of the United Nations (Sanctions — Iran) Regulations 2008 ("the Iran Regulations").

The Assets Regulations implement Australia's obligations to freeze assets and prevent assets being made available to all persons designated by the UNSC in various resolutions. Those persons are identified in the Assets Regulations by reference to a list of other regulations made under this Act implementing UN sanctions. The amendments insert an updated list of such regulations.

The amendments to the DPRK Regulations and the Iran Regulations clarify that certain provisions within these regulations are "UN sanction enforcement laws" as specified by the Minister for Foreign Affairs under the Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008. Under section 27 of the Act, it is an offence to contravene a UN sanction enforcement law.

These Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Cote d'Ivoire) Regulations 2008 (SLI 2008 No 43)

These Regulations implement Australia's obligations under UNSC Resolutions 1643 (2005) and 1572 (2004), imposing sanctions on Côte d'Ivoire. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms or related matériel or related technical training (subject to certain exceptions principally related to the supply of goods to the United Nations Operations in Côte d'Ivoire (UNOCI));
- a prohibition on the procurement of rough diamonds from Côte d'Ivoire;
- an asset freezing regime applying to persons designated in the Resolutions (subject to some narrow exceptions); and
- a prohibition on designated persons from entering into or transiting through Australian territory.

The Regulations repeal the Charter of the United Nations (Sanctions – Cote d'Ivoire) Regulations 2005, which previously implemented Australia's obligations under Resolutions 1643 (2005) and 1572 (2004).

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Democratic Republic of the Congo) Regulations 2008 (SLI 2008 No 44)

These Regulations implement Australia's obligations under UNSC Resolutions 1807 (2008), 1771 (2007), 1596 (2005), 1533 (2004) and 1493 (2003), imposing sanctions on the Democratic Republic of the Congo (DRC). The sanctions imposed by the Regulations are:

- a prohibition on the export of arms or related matériel and related technical training or financial assistance to all non-governmental entities and individuals operating in the DRC;
- an asset freezing regime applying to persons designated in the Resolutions (subject to some narrow exceptions); and
- a prohibition on designated persons from entering into or transiting through Australian territory.

The Regulations repeal the Charter of the United Nations (Sanctions – Democratic Republic of the Congo) Regulations 2005, which previously implemented Australia's obligations under the Resolutions.

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Iraq) Regulations 2008 (SLI 2008 No 45)

These Regulations implement Australia's obligations under UNSC Resolutions 661 (1990), 778 (1992), 1483 (2003) and 1546 (2004), imposing sanctions on Iraq. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms or related matériel to Iraq except if required by the Government of Iraq or the multilateral force referred to in Resolution 1483 (2003) to serve the purposes of Resolution 1546 (2004);
- a freeze on the assets of the previous Government of Iraq located in Australia as of 22 May 2003, as well as any assets that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members;
- the transfer of such assets to the Development Fund for Iraq; and
- measures to facilitate the safe return to Iraq of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since 6 August 199, including by a prohibition on the trade in or transfer of such items.

The Regulations repeal the Charter of the United Nations (Sanctions – Iraq) Regulations 2006, which previously implemented Australia's obligations under the Resolutions.

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Lebanon) Regulations 2008 (SLI 2008 No 46)

These Regulations implement Australia's obligations under UNSC Resolutions 1636 (2005) and 1701 (2006), imposing sanctions on Lebanon. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms or related matériel, or related technical training or assistance, to Lebanon, unless authorised by the Government of Lebanon or by the United Nations Interim Force in Lebanon; and
- an asset freezing regime applying to persons designated in the Resolutions who are suspected of involvement in the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and 22 others.

The Regulations repeal the Charter of the United Nations (Sanctions – Lebanon) Regulations 2006, which previously implemented Australia's obligations under Resolutions 1636 (2005) and 1701 (2006).

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Liberia) Regulations 2008 (SLI 2008 No 47).

These Regulations implement Australia's obligations under UNSC Resolutions 1792 (2007), 1731 (2006), 1683 (2006), 1532 (2004) and 1521 (2003), imposing sanctions on Liberia. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms or related matériel, or related technical training or assistance, to Liberia;
- an asset freezing regime applying to persons designated in the Resolutions; and
- a prohibition on designated persons from entering into or transiting through Australian territory.

The Regulations repeal the Charter of the United Nations (Sanctions – Liberia) Regulations 2002, which previously implemented Australia's obligations under the Resolutions.

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions - Rwanda) Regulations 2008 (SLI 2008 No 48)

These Regulations implement Australia's obligations under UNSC Resolutions 1005 (1995) and 1011 (1995). The sanctions imposed by the Regulations are a prohibition on the export of arms or related matériel to Rwanda, or to persons in neighbouring States (Burundi, the DRC, Tanzania, and Uganda) if the purpose of the export is for such arms or matériel to be used within Rwanda contrary to those Resolutions.

The Regulations repeal the Charter of the United Nations (Sanctions — Rwanda) Regulations 2006, which previously implemented Australia's obligations under Resolutions 1005 (1995) and 1011 (1995).

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Sierra Leone) Regulations 2008 (SLI 2008 No 49)

These Regulations implement Australia's obligations under UNSC Resolution 1171 (1998), imposing sanctions on Sierra Leone. The sanctions imposed by the Regulations are a prohibition on the export of arms or related matériel to Sierra Leone, except if the export is to the Government of Sierra Leone through points of entry named in the Resolution, or is for the sole use in Sierra Leone of the Military Observer Group of the Economic Community of West African States or the UN.

The Regulations repeal the Charter of the United Nations (Sanctions – Sierra Leone) Regulations 1997, which previously implemented Australia's obligations under Resolution 1171 (1998).

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Somalia) Regulations 2008 (SLI 2008 No 50)

These Regulations implement Australia's obligations under UNSC Resolutions 733 (1992), 1356 (2001), 1425 (2002) and 1744 (2007), imposing sanctions on Somalia. The sanctions imposed by the Regulations are a prohibition on the export of weapons and military equipment to Somalia and on financing their acquisition or delivery.

The Regulations repeal the Charter of the United Nations (Sanctions – Somalia) Regulations 2006, which previously implemented Australia's obligations under the Resolutions.

The Regulations commenced on 17 April 2008.

Charter of the United Nations (Sanctions — Sudan) Regulations 2008 (SLI 2008 No 51)

These Regulations implement Australia's obligations under UNSC Resolutions 1556 (2004) and 1591 (2005), imposing sanctions on Sudan. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms or related matériel, or related technical or financial training or assistance, to Sudan;
- an asset freezing regime applying to persons designated in the Resolutions; and
- a prohibition on designated persons from entering into or transiting through Australian territory.

The Regulations repeal the Charter of the United Nations (Sanctions – Sudan) Regulations 2005, which previously implemented Australia's obligations under Resolutions 1556 (2004) and 1591 (2005).

The Regulations commenced on 11 April 2008.

Charter of the United Nations (Sanctions — Rwanda) Repeal Regulations 2008 (SLI 2008 No 177)

These Regulations repeal the Charter of the United Nations (Sanctions — Rwanda) Regulations 2008, which implemented UNSC sanctions in relation to Rwanda. This follows the adoption by the UNSC of Resolution 1823 on 10 July 2008, which terminated the sanctions in relation to Rwanda imposed originally by Resolutions 1005 (1995) and 1011 (1995).

These Regulations commenced on 2 September 2008.

28. Regulations made under the Customs Act 1901 Customs Amendment Regulations 2008 (No. 2) *(SLI 2008 No. 21)*

These Regulations amend the Customs Regulations 1926 in accordance with the International Trade Integrity Act 2007, which amended the Customs Act 1901. The Trade Integrity Act established new criminal offences for importing or exporting goods that are subject to UN sanctions without permission (as required in the Customs (Prohibited Imports) Regulations 1956 or the Customs (Prohibited Exports) Regulations 1958, where applicable). It also established an offence of providing false or misleading information in an application for such permission.

The Act provides for those goods to which these offences apply to be prescribed in regulations, subject to certain requirements. The Regulations prescribe a range of goods as UN-sanctioned goods, including rough diamonds from Cote d'Ivoire, certain goods from the Democratic People's Republic of Korea and Iran and paramilitary equipment exported to Sierra Leone.

The Regulations commenced on 25 March 2008.

Customs Amendment Regulations 2008 (No 5) (SLI 2008 No 173)

The Regulations amend the Customs Regulations 1926 to reflect the termination by the UN Security Council of trade sanctions on the supply, sale or transfer of arms and related matériel to Rwanda. These Regulations remove goods that were subject to these sanctions from the list of UN-sanctioned goods in the Customs Regulations 1926, in respect of which criminal offences of importing or exporting such goods without permission and providing false or misleading information in an application for such permission apply.

The Regulations commenced on 2 September 2008.

Customs Amendment Regulations 2008 (No 8) (SLI 2008 No 253)

These Regulations prescribe record keeping obligations on producers and exporters of goods to Chile and prescribe new refund circumstances with respect to goods

imported into Australia from Chile, in order to fulfil Australia's obligations under the Australia-Chile Free Trade Agreement.

The Regulations commenced on 6 March 2009.

Customs (Chilean Rules of Origin) Regulations 2008 (SLI 2008 No 254)

The purpose of the Regulations is to prescribe matters relating to the rules of origin for goods imported from Chile into Australia. Amongst other matters, the Regulations detail the product-specific requirements for each tariff classification of goods; explain the method used in determining the regional value content of goods; and specify the rules for determining the value of certain classes of goods.

The Regulations commenced on 6 March 2009.

Customs (Prohibited Exports) Amendment Regulations 2008 (No 1)(SLI 2008 No 22)

The Customs (Prohibited Exports) Regulations, in part, implement sanctions imposed by the UN.

These Regulations establish the procedural requirements for a person seeking the permission of the Foreign Minister (or another authorised person) to export a good covered by the Customs (Prohibited Exports) Regulations. These requirements apply to: the importation of rough diamonds from Cote d'Ivoire; the importation of certain goods from Iran; the exportation of paramilitary equipment to Sierra Leone; the exportation of arms or related matériel to Afghanistan, Liberia, Democratic Republic of the Congo, Sudan, Cote d'Ivoire, Democratic People's Republic of Korea and Lebanon; and the exportation of certain goods to Iran and Rwanda.

These Regulations also update references in the Customs (Prohibited Exports) Regulations to the Charter of the United Nations (Sanctions - Democratic People's Republic of Korea) Regulations 2006 and the Charter of the United Nations (Sanctions - Iran) Regulations 2007, which were repealed and replaced respectively by the Charter of the United Nations (Sanctions - Democratic People's Republic of Korea) Regulations 2008 and the Charter of the United Nations (Sanctions-Iran) Regulations 2008.

These Regulations commenced on 25 March 2008.

Customs (Prohibited Exports) Amendment Regulations 2008 (No 2) (SLI 2008 No 174)

The Regulations amend the Customs (Prohibited Exports) Regulations 1958 to reflect the termination by the UN Security Council (under UNSC Resolution 1823) of trade sanctions on the supply, sale or transfer of arms and related matériel to Rwanda. These Regulations repeal the prohibition on the export of specified paramilitary goods to Rwanda without the written permission of the Minister for Foreign Affairs or an authorised person from the Department of Foreign Affairs and Trade.

These Regulations commenced on 2 September 2008.

Customs (Prohibited Imports) Amendment Regulations 2008 (No 1) (SLI 2008 No 23)

The Customs (Prohibited Imports) Regulations, in part, implement sanctions imposed by the UN.

The Regulations establish the procedural requirements for a person seeking the permission of the Foreign Minister (or another authorised person) to export a good covered by the Customs (Prohibited Exports) Regulations. These requirements apply to: the importation of rough diamonds from Cote d'Ivoire; the importation of certain goods from Iran; the exportation of paramilitary equipment to Sierra Leone; the exportation of arms or related matériel to Afghanistan, Liberia, Democratic Republic of the Congo, Sudan, Cote d'Ivoire, Democratic People's Republic of Korea and Lebanon; and the exportation of certain goods to Iran and Rwanda.

These Regulations commenced on 25 March 2008.

Customs (Prohibited Imports) Amendment Regulations 2008 (No 7) (SLI 2008 No 256)

These Regulations introduce import controls on particular incandescent light bulbs to help reduce Australia's greenhouse emissions and to meet Australia's obligations under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol).[37] Article 3(1) of the Kyoto Protocol requires the Parties listed in Annex I to the Convention[38] (including Australia) to ensure that their greenhouse gas emissions in the commitment period from 2008 to 2012 do not exceed the amounts assigned to them under the Protocol. At the time these Regulations were made, lighting from Australian homes contributed 12% to Australia's greenhouse emissions.

These Regulations commenced on 1 February 2009.

Customs (Thailand-Australia Free Trade Agreement) Amendment Regulations 2008 (No 1) (SLI 2008 No 227)

These Regulations amend Schedule 1 of the Customs (Thailand-Australia Free Trade Agreement) Regulations 2004 to incorporate amendments to the product-specific rules of origin contained in Annex 4.1 to the Australia-Thailand Free Trade Agreement (the Agreement).[39]

Annex 4.1 of the Agreement sets out the product-specific requirements for goods according to the tariff classification of the goods under the Harmonized Commodity Description and Coding System (the Harmonized System). The Harmonized System is the classification system for traded goods adopted by

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37 [2008] ATS 2.

38 [1994] ATS 2.

39 [2005] ATS 2.

signatories to the International Convention on the Harmonized Commodity Description and Coding System (the Convention)[40], including Australia and Thailand. It is regularly reviewed and the most recent review resulted in several hundred changes to its classifications of goods, which took effect on 1 January 2007. In accordance with their obligations under the Convention, Australia and Thailand agreed to amend Annex 4.1 to the Agreement to incorporate these changes.

The Regulations have not yet commenced.

29. Regulations made under the Extradition Act

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.

Extradition (Commonwealth Countries) Amendment Regulations 2008 (No 1) (SLI 2008 No 164)

The Regulations amend the Extradition (Commonwealth Countries) Regulations 1998 (the Principal Regulations), which contain a Schedule listing those countries, colonies, territories and protectorates which are declared to be an extradition country for the purpose of the Extradition Act. Extradition between Australia and these Commonwealth countries is governed by the multilateral London Scheme and not by bilateral treaty arrangements.

The Regulations omit Malaysia from the Schedule to the Principal Regulations. In 2005, Australia concluded a bilateral extradition treaty with Malaysia,[41] which is implemented in Australian law in the Extradition (Malaysia) Regulations 2006. Due to an oversight, Malaysia was not removed from the Schedule at that time. Australia's extradition relationship with Malaysia continues to be governed by the Extradition (Malaysia) Regulations 2006.

The Regulations also replace 'Western Samoa' in the Schedule with 'Samoa'. This reflects that country's decision in July 1997 to change its name in its Constitution. The Regulations do not alter the existing arrangements for extradition between Australian and Samoa.

The Regulations commenced on 9 August 2008.

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40 [1988] ATS 30.

41 The Treaty on Extradition between the Government of Australia and the Government of Malaysia and the Exchange of Notes between Australia and Malaysia on the Treaty on Extradition, [2006] ATS 20.

Extradition (Hong Kong) Regulations 2008 (SLI 2008 No 12)

The Regulations repeal the Extradition (Hong Kong) Regulations and implement Australia's extradition treaty with Hong Kong, as amended by the Protocol amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993 between the Government of Australia and the Government of Hong Kong Special Administrative Region of the People's Republic of China (the Protocol).[42]

The Protocol modernizes extradition arrangements between Australia and Hong Kong in two ways. First, it changes the standard for extradition requests from Hong Kong to Australia from a 'prima facie' to a 'no evidence' standard. This reduces the time and resources required to process extradition requests, as a request need not include evidence, but only statements about the offence for which extradition is sought (including applicable penalties) and the alleged conduct of the accused. Secondly, the Protocol obliges both countries to provide reasons in the event of a partial or full refusal to grant an extradition request.

The text of the Agreement and the Protocol are inserted as Schedules 1 and 2 to the Regulations.

The Regulations commenced on 7 May 2008, the day on which the Protocol entered into force.

30. Intellectual Property Legislation Amendment Regulations 2008 (No 1) (SLI 2008 No 279)

The Regulations make various amendments to the Patents Regulations 1991, Trade Marks Regulations 1995 and Designs Regulations 2004, in line with Australia's obligations as Party to the Patent Cooperation Treaty (PCT)[43] and the Paris Convention for the Protection of Industrial Property (Paris Convention)[44] and as a member of the World Trade Organization (WTO).

The PCT (and the Rules made pursuant to it, which are binding on the Parties) provide for cooperation between member countries in the filing, searching and examination of applications for the protection of inventions. The Regulations update the Rules set out in Schedule 2A to the Patents Regulations 1991 to reflect minor changes made by the International Patent Cooperation Union in October 2007 and September 2008. The changes introduce a supplementary international search system for patent applications and include Korean and Portuguese as languages of International Publication.

The Regulations also enable the Commissioner of Patents—acting with the patent applicant's consent—to provide an electronic copy of a patent application filed in Australia to a secure digital library maintained by the International Bureau of the World Intellectual Property Organization (WIPO) or by a foreign patent

42 [2008] ATS 6.

43 [1980] ATS 6.

44 [1907] ATS 6, as revised in [1972] ATS 12.

office (e.g. the US Patent and Trademark Office). This removes the costly and time-consuming requirement for patent applicants under the Paris Convention to file paper copies of their Australian application with foreign patent offices, when claiming a right of priority for filings in foreign jurisdictions.

In addition, the Regulations amend Schedule 4 to the Patents Regulations, Schedule 10 to the Trade Marks Regulations 1995 and Schedule 1 to the Designs Regulations 2004 to correct the spelling of 'Bosnia and Herzegovina' and to include Cape Verde as a Paris Convention country. Cape Verde became a member of the WTO on 23 July 2008.

The Regulations commenced on 1 January 2009.

31. International Criminal Court Regulations 2008 (SLI 2008 No 7)

The International Criminal Court Act 2002 (the Act) implements Australia's international obligations under the Rome Statute of the International Criminal Court (the Statute), to which Australia is a Party.[45] The Statute imposes certain obligations on Parties to cooperate fully with the International Criminal Court (ICC). These obligations include cooperation in the event of a request for the arrest, provisional arrest or surrender of a person to the ICC and assistance with the forfeiture of property related to crimes within the jurisdiction of the ICC.

The Act prescribes procedures which govern Australia's cooperation with the ICC, including requirements for certain notices, applications, authorisations and warrants to be executed in a prescribed form. Schedule 1 of the Regulations prescribes 11 statutory forms relating to requests for the arrest and surrender of a person (Forms 1–8) and requests for the registration of ICC orders for reparation, fines and forfeiture (Forms 9–11). Each form specifies the person (or class of persons) to whom the notice, application, authorisation or warrant is to be directed, in addition to the person (or class of persons) who is issuing the relevant document. The prescribed contents of the forms are based on the corresponding provisions of the Act.

The Regulations commenced on 15 February 2008.

32. 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

45 [2002] ATS 15.

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 (China) Regulations 2008 (SLI 2008 No 260)

These Regulations declare China to be a transfer country for the purposes of the International Transfer of Prisoners Act 1997 and applies the Act to China.

The Treaty between Australia and the People's Republic of China concerning the Transfer of Sentenced Persons (the Treaty) was signed on 6 September 2007. The Treaty has not yet entered into force in Australia.[46] If the Treaty is ratified, the Regulations will be amended to provide that transfer of prisoners between Australia and China are subject to the terms of the Treaty.

The Regulations were made prior to the Treaty entering into force to permit a particular Australian citizen, who was incarcerated in China, to be transferred to Australia on urgent medical grounds. The Regulations do not oblige Australia to transfer any prisoners to or from China.

The Regulations commenced on 19 December 2008.

International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Amendment Regulations 2008 (No 1) (SLI 2008 No 24)

These Regulations amend the International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Regulations 2002, which implement the Council of Europe's Convention on the Transfer of Sentenced Persons (the Convention).[47] The amendment provides that a foreign country for which the Convention is in force is a 'transfer country' for the purposes of the International Transfer of Prisoners Act 1997. Previously, the Parties to the Convention were listed by name in Schedule 2. The Regulations remove Schedule 2.

The Regulations commenced on 26 March 2008.

33. Regulations made under the Migration Act 1958

Migration Amendment Regulations 2008 (No 1) (SLI 2008 No 33)

The purpose of these Regulations is to amend the Migration Regulations 1994 to allow certain applicants to be granted a Subclass 200 (Refugee) or Subclass 201 (In-country Special Humanitarian) visa. Subclass 200 generally applies to applicants who are not in their home country and are subject to persecution. Subclass 201 applies to applicants who are in their home country and are subject to persecution.

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46 [2007] ATNIF 27.

47 [2003] ATS 6.

The Regulations facilitate access to a permanent humanitarian visa for certain locally engaged Iraqi citizens, who have worked collaboratively with the Australian Defence Forces (the ADF) in Iraq and are at risk of harm because of this work, provided all other necessary criteria are satisfied.

The Regulations also accommodate future circumstances in which it may be appropriate to grant humanitarian visas to local citizens in other countries who provide assistance to, for example, the ADF, the AFP or other departments or agencies of the Australian Government. In such circumstances, the Minister for Immigration and Citizenship may decide to specify a new class of persons entitled to access to humanitarian visas, after consultation with the Prime Minister, the Minister for Finance and Deregulation and any other relevant Minister.

Australia is a Party to the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (the Refugees Convention).[48] The Migration Act 1958 and the Migration Regulations 1994, amongst other matters, implement Australia's obligations under the Refugees Convention.

The Regulations commenced on 1 July 2008.

Migration Amendment Regulations 2008 (No 5) (SLI 2008 No 168)

These Regulations amend the Migration Regulations 1994 to repeal Temporary Protection visas (TPVs) and Temporary Humanitarian visas (THVs), such that all future arrivals in Australia who are entitled to protection pursuant to Australia's obligations under the Refugees Convention are granted a Permanent Protection (Subclass 866) visa, regardless of their mode of arrival in Australia or whether they have previously held a visa.

The Regulations also remove the 'seven day rule' from permanent protection and permanent humanitarian visas which requires that since last leaving their home country, applicants must not have resided for a continuous period of 7 days or more in a country in which they could have sought and obtained effective protection.

Finally, the Regulations allow for the holders of TPVs or THVs (and in some instances the former holders of these visas), to have their status permanently resolved through the grant of a new permanent visa without the need for a reassessment of whether Australia owes that person protection obligations under the Refugees Convention (subject to meeting health, character and security criteria).

The Regulations commenced on 9 August 2008.

Migration Amendment Regulations 2008 (No 8) (SLI 2008 No 237)

These Regulations make various amendments to the Migration Regulations 1994. The amendments in Schedule 1 relate to Australia's protection obligations under

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48 [1954] ATS 5.

the Refugees Convention, which are implemented in Australian law in the Migration Act 1958 and the Migration Regulations 1994. Schedule 1 makes a minor technical amendment to the definition of 'permanent humanitarian visa', to include reference to Resolution of Status (Class CD) visas. This ensures that holders of these visas are able to access HECS-HELP or FEE-HELP assistance under the Higher Education Support Act 2003.

Schedule 2 re-enacts the provisions relating to the Safe Third Country Memorandum of Understanding between Australia and the People's Republic of China, after these provisions ceased to be in effect on 30 June 2008.

The amendments in Schedules 1 and 2 commenced on 9 August 2008 and 5 December 2008 respectively.

34. Mutual Assistance in Criminal Matters (Thailand) Regulations 2008 (SLI 2008 No 200)

The Regulations are intended to give effect to the Treaty between Australia and the Kingdom of Thailand on Mutual Assistance in Criminal Matters (the Treaty).[49] The Treaty obliges Australia and Thailand 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 18 June 2009, on the date the Treaty entered into force.

35. National Greenhouse and Energy Reporting Regulations 2008 (SLI 2008 No. 127)

The Regulations establish the details of the reporting scheme for Australian corporations required to report greenhouse gas emissions, greenhouse gas projects (abatement actions) and energy consumption and production under the National Greenhouse and Energy Reporting Act 2007 (the Act). Data reported under the Act will assist Australia to meet its international reporting obligations under the United Nations Framework Convention on Climate Change and its Kyoto Protocol.

In line with the particular matters specified by the Act, the Regulations deal with issues such as the registration requirements for corporations, the reporting obligations of registered corporations and the disclosure of reported information by the Greenhouse and Energy Data Officer (the regulatory and administrative decision maker under the Act).

The Regulations commenced on 1 July 2008.

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49 [2009] ATS 15.

36. Secretariat to the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels (Privileges and Immunities) Regulations 2008 (SLI 2008 No 233)

The Regulations give effect to the Headquarters Agreement between the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels and the Government of Australia.[50] The Headquarters of the Secretariat to the Agreement on the Conservation of Albatrosses and Petrels (ACAP) will be permanently based in Hobart, Tasmania.

The Regulations accord the Meeting of the Parties to ACAP and the Secretariat the status of an "international organisation" under the International Organisations (Privileges and Immunities Act) 1963. The Regulations provide that the ACAP Secretariat will enjoy legal capacity and personality, as well as certain immunities (including immunity from suit) and exemption from direct taxes in Australia. The Regulations also extend certain privileges and immunities from legal process to the Executive Secretary and other staff of the ACAP Secretariat, as well as their family members, representatives at ACAP meetings and relevant experts.

The Regulations commenced on 13 January 2008.

37. Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (No 1) (SLI 2008 No 107)

These Regulations amend the Social Security (International Agreements) Act 1999 (the 1999 Act) and are intended to implement Australia's obligations under the Agreement on Social Security between the Government of Australia and the Government of Japan (the Agreement).[51] The Agreement coordinates the age pensions and superannuation schemes of the two countries in order to improve welfare protection for persons who move between Australia and Japan. Consistent with Australia's general practice that social security treaties appear as Schedules to the 1999 Act, the text of the Agreement is inserted as Schedule 23.

The Schedule containing the Agreement commenced on 1 January 2009. The remaining provisions commenced on 21 June 2008.

38. Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (No 2) (SLI 2008 No 265)

These Regulations amend the Social Security (International Agreements) Act 1999 (the 1999 Act) and are intended to implement Australia's obligations under the Agreement between Australia and the Republic of Finland on Social Security (the Agreement).[52] The Agreement coordinates the age pensions and superannuation schemes of the two countries in order to improve welfare protection for persons who move between Australia and Finland. Consistent with Australia's general

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50 [2008] ATS 19.

51 [2009] ATS 2.

52 [2009] ATS 16.

practice that social security treaties appear as Schedules to the 1999 Act, the text of the Agreement is inserted as Schedule 24.

The Schedule containing the Agreement commenced on 1 July 2009. The remaining provisions commenced on 20 December 2008.

39. Trans-Tasman Mutual Recognition Amendment Regulations 2008 (No 1) (SLI 2008 No 59)

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is a non-treaty agreement between the Commonwealth, State and Territory Governments of Australia and the Government of New Zealand, which gives effect to mutual recognition principles relating to the sale of goods and the registration of occupations. It provides that a good that may be sold legally in Australia may be sold in New Zealand (and vice versa) and that a person registered to practice an occupation in Australia is entitled to practice the same occupation in New Zealand (and vice versa).

The Trans-Tasman Mutual Recognition Act 1997 (the Act) recognises within Australia the regulatory standards adopted in New Zealand regarding such goods and occupations. The Schedules to the Act set out the exclusions and exemptions to the Act. In particular, Schedule 3 provides for special exemptions for laws relating to certain goods including therapeutic goods; radio communications devices; road vehicles; gas appliances; and hazardous substances, industrial chemicals, and dangerous goods.

The purpose of the Regulations is to extend the special exemptions laws relating to goods covered by Schedule 3 for a further twelve months to 30 April 2009. The extension allows Australian and New Zealand regulators to continue to develop complementary regulatory arrangements for those matters which are the subject of the current exemptions.

These regulations commenced on 15 April 2008.