

Australian Legislation Concerning Matters of International Law 2006

*Alicia Fairlie, Lauren Henschke, James Potter
and Andrew Sainsbury**

Commonwealth Statutes

1. Age Discrimination Amendment Act 2006 (No 63 of 2006)

This Act amends the provisions of the Age Discrimination Act 2004 relating to exemptions to the prohibition in the Age Discrimination Act 2004 on discrimination on the basis of age. Among other things, the Act introduces a new exemption for anything done in compliance with certain specified legislative instruments implementing the Convention on International Civil Aviation (the Chicago Convention).¹ As the Chicago Convention deals with matters such as minimum ages for obtaining licences and testing of pilots' medical fitness, the exemptions are necessary to ensure that Australia's regulatory regime substantially complies with the Chicago Convention.

The Act commenced on 22 June 2006.

2. Anglo-Australian Telescope Agreement Amendment Act 2006 (No 1 of 2006)

The Anglo-Australian Telescope Agreement Act 1970 implements the Agreement to provide for the Establishment and Operation of a Large Optical Telescope,² a treaty made in 1969 between Australia and the United Kingdom setting out arrangements for the operation of the Anglo-Australian Telescope (the Anglo-Australian Telescope Agreement). The arrangements set out in the Anglo-Australian Telescope Agreement were modified by the Supplementary Agreement with the Government of the United Kingdom of Great Britain and Northern Ireland concerning the Anglo-Australian Optical Telescope, at Siding Spring, New South Wales, Australia,³ made on 3 November 2005. The Act does not make substantive changes to the Anglo-Australian Telescope Agreement Act 1970 but merely amends references to the Anglo-Australian Telescope Agreement in the Anglo-Australian Telescope Agreement Act 1970 to include references to the Supplementary Agreement. There are also a number of changes of a machinery nature.

* Office of International Law, Attorney-General's Department, Canberra.

¹ Convention on International Civil Aviation (7 December 1944), 15 UNTS 295, [1957] ATS 5.

² [1971] ATS 2.

³ [2007] ATS 13.

The amendments commenced on 27 June 2006.

3. Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (No 169 of 2006)

This Act introduces the first tranche of comprehensive reforms to Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime. The reforms are aimed at bringing Australia into line with international AML/CTF standards set by the Financial Action Task Force (FATF), including the FATF's nine Special Recommendations on Terrorist Financing.

The new regime applies to the financial and gambling sectors, bullion dealers and lawyers/accountants to the extent that they provide financial services in direct competition to the financial sector. The Act defines a wide range of financial services as 'designated services' and places obligations on entities that provide such designated services to customers. These obligations include requirements to:

- identify and verify the identity of customers;
- report suspicious matters, transactions above a threshold amount and international funds transfer instructions to the Australian Transaction Reports and Analysis Centre (AUSTRAC);
- develop and maintain an AML/CTF program to identify, mitigate and manage money laundering and terrorism financing risks; and
- keep certain records for a seven-year period.

The Act also places reporting obligations on persons moving large amounts of physical currency or bearer negotiable instruments into or out of Australia and places restrictions on financial institutions in relation to correspondent banking relationships.

The provisions of the Act commence in a staged fashion, with some aspects of the new regime having commenced on 13 December 2006, 12 June 2007 and 12 December 2007, and the remainder to commence on 12 December 2008.

4. Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Act 2006 (No 102 of 2006)

This Act makes amendments to the Civil Aviation Act 1988 to allow mutual recognition of Air Operator's Certificates for large aircraft issued by the Civil Aviation Safety Authority (CASA) of Australia and the Civil Aviation Authority of New Zealand (CAANZ). Such mutual recognition was anticipated by the Agreement between the Government of Australia and the Government of New Zealand Relating to Air Services⁴ made in 2002 (an 'Open Skies' Air Services Agreement).

The amendments commenced on 30 March 2007.

⁴ [2003] ATS 18.

5. Copyright Amendment Act 2006 (No 158 of 2006)

The Act introduces major reforms to the Copyright Act 1968 arising from review of Australia's copyright laws conducted in 2005 and 2006 and other policy initiatives. The Act, amongst other things, introduces amendments to implement obligations in the Australia-US Free Trade Agreement (AUSFTA)⁵ relating to technological protection measures.

The amendments implement Australia's obligations under the AUSFTA relating to technological protection measures (TPMs). TPMs are technical locks used by copyright owners to control access to and use of their works. Article 17.4.7 of the AUSFTA requires Australia to provide adequate legal protection and effective legal remedies against circumvention of TPMs used to control access to a copyright work and trafficking in devices and services connected to circumvention of TPMs.

The amendments achieve this by introducing a new offence of circumventing a TPM used to control access to a work, and grant copyright owners and licensees a right to bring an action against persons who circumvent a TPM used to control access to a work. New offences and rights of action are also introduced in relation to manufacturing a circumvention device for a TPM or providing a circumvention service for a TPM. A number of specific exceptions are allowed, and further exceptions benefiting particular users of copyright material were introduced by the Copyright Amendment Regulations 2006 (No 1).

The amendments commenced on 1 January 2007.

6. Corporations (Aboriginal and Torres Strait Islander) Act 2006 (No 124 of 2006)

The law is intended to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders in accordance with Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁶ Article 1(4) of CERD allows states party to implement special measures for the purpose of 'securing adequate advancement of certain racial or ethnic groups' as is necessary to ensure such groups share 'equal enjoyment or exercise of human rights and fundamental freedoms'.

The object of the Act is to provide a separate system of registration and regulation for native title bodies corporate. This includes creating a Registrar for Aboriginal and Torres Strait Islander corporations and regulating the duties and performance of officers working within those corporations.

Indigenous corporations provide remote Australian communities, holding land and native title, with the necessary means to manage infrastructure and deliver the basic services, such as medical care. This Act amends the earlier Aboriginal Councils and Associations Act 1976 to improve corporate accountability, while

⁵ [2005] ATS 1.

⁶ International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), 660 UNTS 195, [1975] ATS 40.

allowing additional flexibility for Indigenous corporations to tailor their arrangements to suit the special circumstances under which they operate.

The Act commenced on 1 July 2007.

7. Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006 (No 166 of 2006)

The Act is designed to simplify the process of determining whether a good from New Zealand is a New Zealand originating good and therefore eligible for a preferential rate of duty, in line with amendments to Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement,⁷ which deals with rules of origin.

The Act allows the 'change in tariff classification' method to be used, along with a regional value content requirement, to determine whether goods from New Zealand are New Zealand-originating goods. The Act also contains minor consequential amendments to customs-related legislation and the Legislative Instruments Act 2003.

The new rules applied to goods imported into Australia on and after 1 January 2007.

The Act commenced on 1 January 2007.

8. Customs Amendment (2007 Harmonized System Changes) Act 2006 (No 119 of 2006) and Customs Tariff Amendment (2007 Harmonized System Changes) Act 2006 (No 118 of 2006)

These Acts implement changes resulting from the third review by the World Customs Organisation of the Harmonized Commodity Description and Coding System (the Harmonized System), consistent with Australia's obligations as a signatory to the International Convention on the Harmonized Commodity Description and Coding System.⁸

The Act has deleted classifications for goods where there have been low levels of international trade, clarified existing descriptions and terminology in the Harmonized System and introduced new classifications to reflect technological changes and industry practices, in line with the third review of the Harmonized System. It also provides new classifications to identify separately a number of hazardous or dangerous chemicals, pesticides, or wastes such as chlorofluorocarbons, mercury compounds, aldrin and asbestos in accordance with monitoring requirements under various United Nations conventions including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.⁹

⁷ [1983] ATS 2.

⁸ International Convention on the Harmonized Commodity Description and Coding System [(14 June 1983), 1503 UNTS 167, [1988] ATS 30.

⁹ Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam, 10-11 September 1998, UN Doc UNEP/FAO/PIC/CONF/2, reprinted in (1999) 38 ILM 1, [2004] ATS

The Act includes amendments that alter schedules 5 and 6 of the Customs Tariff, which give effect to the application of customs duty on goods the subject of free-trade agreements with the United States and Thailand respectively.

The Act commenced on 4 November 2006.

9. Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Act 2006 (No 164 of 2006)

This Act amends the Antarctic Treaty (Environment Protection) Act 1980, which gives effect to Australia's obligations under the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol).¹⁰

Measures giving effect to Australia's obligations under the Convention on the Conservation of Antarctic Seals¹¹ were previously embodied in the Antarctic Seals Conservation Regulations 1986, which meant that penalties for offences could only be set at a low level. This Act transfers the seals-related measures in the existing Antarctic Seals Conservation Regulations 1986 into the Antarctic Treaty (Environment Protection) Act 1980. This then enabled the government to implement increased penalties for seals-related offences in order to bring them into line with international standards and other wildlife-related penalties in the Antarctic Treaty (Environment Protection) Act 1980.

The Act also increases the penalties available for mining offences in the Antarctic. In addition to the pecuniary penalty already available, the Act introduces a maximum imprisonment penalty of 16 years for mining in the Antarctic. The ban on mining is the key feature of the Madrid Protocol and the severity of the proposed penalty reflect the seriousness of this offence.

The Act commenced on 11 June 2007.

10. Financial Transaction Reports Amendment Act 2006 (No 134 of 2006)

The Financial Transaction Reports Amendment Act 2006 (the Act) amends Division 3A of the Financial Transaction Reports Act 1988 (the FTR Act). The purpose of the FTR Act is to reduce the incidence and facilitate the tracking of money laundering and terrorist financing.

To strengthen Australia's money laundering and terrorist financing regime in line with Financial Action Task Force recommendations, the Act restricts the application of Division 3A of the FTR Act, which establishes a framework for the collection of information about certain types of international funds transfer instructions out of Australia, to authorised deposit-taking institutions.

The Act amends the definition of 'account' and 'customer information'. The definition of account is expanded to incorporate new types of account including a credit card account, a loan account (other than a credit card account) and an account of money held in the form of units in either a cash management trust or a

22.

¹⁰ (4 October 1991) reprinted in (1991) 30 ILM 1455, [2001] ATS 7.

¹¹ (1 June 1972) reprinted in (1972) 11 ILM 251, [1987] ATS 11.

trust of a kind prescribed by the Regulations. The definition of customer information details what information must be collected on the ordering customer sending the international funds transfer instruction.

Sections 1 to 3 of the Act commenced on 9 November 2006. Schedule 1 of the Act commenced on 14 December 2006.

11. Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006 (No 8 of 2006)

Schedule 1 of the Act is designed to clarify uncertainty about the legislative objectives for the management of Australia's fisheries contained in the Fisheries Management Act 1991 (FMA) and the Fisheries Administration Act 1991 (FAA), in particular the scope of the 'economic efficiency' objective. As a legislative objective, the economic efficiency objective must be pursued by the Commonwealth Minister in the administration of the FMA and by the Australian Fisheries Management Authority in the performance of its functions. To clarify the content of the objective, the Act inserts into the FMA and FAA the principles of ecologically sustainable development, complementing those found in the Environment Protection and Biodiversity Conservation Act 1999.

The principles are as follows:

- decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
- if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- the principle of inter-generational equity: that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making, and
- improved valuation, pricing and incentive mechanisms should be promoted.

This assists in giving effect to principles of international law relating to sustainable exploitation of fisheries such as the precautionary principle.

The Act commenced on 23 March 2006.

12. International Tax Agreements Amendment Act (No 1) 2006 (No 100 of 2006)

Schedule 1 of the Act amends the Taxation Administration Act 1953 and the Income Tax Assessment Act 1997 to provide a framework for the collection of a taxation debt on behalf of a foreign tax authority or to take conservancy measures to ensure the collection of that debt. A conservancy measure is a measure aimed at preventing a taxpaying entity from dissipating their assets when they have a tax-related liability. The framework introduced by the Act will apply when there is

a provision relating to mutual assistance for collection of foreign tax debts in an agreement between Australia and another country or territory.

Schedule 2 of the Act amends the International Tax Agreements Act 1953 and the Taxation Administration Act 1953 to facilitate the gathering and exchange of tax information under an obligation in an international agreement. The amendments allow the Commissioner of Taxation to utilise existing information-gathering powers for the purpose of meeting obligations under international agreements. The amendments also provide that exchange of information (in accordance with the terms of an international agreement) does not breach taxation law provisions prohibiting the Commissioner from making a record or disclosing information. The amendments apply regardless of whether the information relates to an Australian tax.

Schedule 3 of the Act amends the International Tax Agreements Act 1953 to implement the Protocol amending the Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the Protocol).¹² The Protocol:

- extends the scope of exchange of information provisions to all federal taxes administered by the Commissioner of Taxation and to all New Zealand taxes
- inserts a new Article on assistance in the collection of cross-border tax debts, and
- inserts a new 'most favoured nation' provision for reductions in withholding taxes on dividends, interest and royalties.

The Act commenced on 14 September 2006.

13. Maritime Legislation Amendment Act 2006 (No 24 of 2006)

This Act amends the Lighthouses Act 1911, the Navigation Act 1912 (the Navigation Act), the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (the Protection of the Sea Act), and the Shipping Registration Act 1981.

The Protection of the Sea Act implements the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL).¹³ The amendments to the Protection of the Sea Act:

- require Australian chemical tankers to prepare and carry a Shipboard Marine Pollution Emergency Plan for Noxious Liquid Substances;
- provide that security, where paid by the owner or master in the event of a pollution breach, must cover the maximum amount of penalties and other expenses that may be payable by all members of the crew, and

¹² [2007] ATS 5.

¹³ International Convention for the Prevention of Pollution from Ships (2 November 1973), 1340 UNTS 184, reprinted in (1973) 12 ILM 1319. The Convention was modified by the Protocol Relating to the International Convention for the Prevention of Pollution from Ships (17 February 1978), 1340 UNTS 61, reprinted in (1978) 17 ILM 546, [1988] ATS 29.

- clarify that documents that may be served on a ship's agent include documents that may be served on the owner, the master or any other member of the crew.

The Navigation Act is amended to replace references to Regulations 13 and 15 of Chapter V of the International Convention for the Safety of Life at Sea (SOLAS),¹⁴ following a revision of Chapter V, which entered into force on 1 July 2002.

The Act provides that regulations made with respect to the qualifications of masters, officers and seamen may give effect to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.¹⁵

The majority of the amendments came into effect on 6 April 2006.

14. Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2006 (No 138 of 2006)

This Act amends the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the Navigation Act 1912 to align these Acts with revised texts of Annex I and Annex II of the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL).¹⁶

The main changes to the legislation are to:

- implement the new four category categorisation system for noxious and liquid substances introduced by the revised Annex II of MARPOL;
- introduce new offence provisions prohibiting the carriage as cargo on Australian ships of substances that have not been categorised or previously assessed; and
- introduce new offence provisions requiring the masters and owners of certain foreign and Australian ships to carry on board a Procedures and Arrangements Manual, in accordance with appendix 4 of Annex II of MARPOL.

The amendments commenced on 1 January 2007.

15. Offshore Petroleum Act 2006 (No 14 of 2006)

This Act replaces the Petroleum (Submerged Lands) Act 1967.

This Act provides for the grant of exploration permits, retention leases, production licences, infrastructure licences, pipeline licences, special prospecting authorities and access authorities, which are to have effect in offshore areas.

Provisions in the Act recognise the fact that agreements have been made between Australia and a number of other countries in the region to resolve overlapping continental shelf claims. In these cases, the outer limit of the offshore area is the limit established under those agreements.

¹⁴ (1 November 1974), 1184 UNTS 2, [1960] ATS 1.

¹⁵ (7 July 1978), 1361 UNTS 2, [1984] ATS 7.

¹⁶ Above n 13.

The Act also recognises Australia's obligations under the 1982 United Nations Convention on the Law of the Sea¹⁷ to allow marine scientific research on its continental shelf. It also enables regulations to be made where there is an identified need to fill a legislative gap in the exercise of Australia's rights under international law in relation to petroleum exploration and production on the continental shelf and in its territorial sea.

The substantive provisions of the Act commenced on 1 July 2008.

16. Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 (No 107 of 2006)

The Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 (the Act) implements the International Convention on the Control of Harmful Anti-fouling Systems on Ships (the AFS Convention).¹⁸

The AFS Convention was adopted on 5 October 2001 and is scheduled to enter into force on 17 September 2008. The AFS Convention will prohibit the use of harmful organotins in anti-fouling paints used on ships and establish a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems.

The Act prohibits the application or reapplication of a harmful anti-fouling compound (HAFC) on an Australian flagged ship, or a foreign ship that is in an Australian shipping facility. From 1 January 2008, it is an offence for an Australian flagged ship that does not comply with the anti-fouling requirements of the Act (excluding a ship that is a pre-2003 exempt platform) to enter or remain in any shipping facility, or for a non-compliant foreign flagged ship to enter or remain in an Australian shipping facility.

Sections 1 and 2 of the Act came into effect on 27 September 2006 and sections 3 to 25 are scheduled to come into effect on 17 September 2008.

17. Protection of the Sea (Powers of Intervention) Amendment Act 2006 (No 44 of 2006)

This Act amends the Protection of the Sea (Powers of Intervention) Act 1981 (the Protection of the Sea Act) that implements the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.¹⁹

The amendments to the Act clarify the status and scope of the Australian government's power of intervention in Australia's Exclusive Economic Zone (EEZ) in cases of oil pollution. The amendments to the Act clarify the extent and scope of intervention powers in relation to prevention of pollution by extending powers of direction for release of tugs or other assets, determination of a place of refuge and directions to persons other than ship owners, masters and salvors in possession of the ship in question.

Further changes to the regime include:

¹⁷ (10 December 1982), 1833 UNTS 397, reprinted in 21 ILM 1261, [1994] ATS 31.

¹⁸ (5 October 2001), IMO Doc AFS/CONF/26, [2002] ATNIF 18.

¹⁹ (29 November 1969), 970 UNTS 211, reprinted in 9 ILM 25, [1984] ATS 4.

- extending the application of the Act to all ships in the coastal sea that pose a threat of significant pollution;
- the provision that intervention directions issued by AMSA will prevail over directions of any other person where these directions conflict with those issued by AMSA's;
- revision of penalties for non-compliance with a direction given under provisions of the Act;
- the provision for responder immunity from liability for decisions made with due care; and
- the provision for reimbursement on just terms for the use of requisitioned property, which includes compensation for damage or loss occurred while the property in question is under requisition.

The amendments came into effect on 22 May 2006.

18. Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006 (No 101 of 2006)

This Act operates to repeal more than 4,100 pages of Australian taxation laws, including the following provisions relating to international law:

- Paragraph 23(kd) of the Income Tax Assessment Act 1936 (ITAA) exempted the pensions of residents of Papua New Guinea if the pensions of Australian residents were exempt under the laws of Papua New Guinea. That paragraph was no longer operative as the same result was achieved by Australia's double taxation agreement with Papua New Guinea, the Agreement between Australia and the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,²⁰ which was added as Schedule 29 to the International Agreements Act 1959 in 1989.
- Section 23ADA of the ITAA exempted the pay and allowances of Australian Federal Police officers covered by a certificate providing that they were on duty with the United Nations Transitional Authority in Cambodia. The Transitional Authority was disbanded in September 1993, effectively rendering section 23ADA inoperative.

The majority of the amendments came into force on 14 September 2006.

19. Trade Marks Amendment Act 2006 (No 114 of 2006)

This Act operates to amend the Trade Marks Act 1995 (the Trade Marks Act).

Section 60 of the Act implements Australia's obligations to protect well-known marks under the Paris Convention for the Protection of Industrial Property²¹ and

²⁰ [1989] ATS 37.

²¹ Paris Convention for the Protection of Industrial Property, as last revised at the Stockholm Revision Conference, 14 July 1967, 828 UNTS 303.

the 1994 World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).²²

To address the fact that there are two different methods of calculating time periods expressed in months relating to trade mark actions, and in accordance with the method used for calculating time periods expressed in months relating to trade mark actions under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol),²³ the Act inserts a definition of 'month' and sets out the method of calculating time periods expressed in months. This ensures that time periods are calculated consistently, regardless of whether the time period is set out in the Trade Marks Act, the Regulations or in the Madrid Protocol.

The majority of the amendments came into force on 23 October 2006.

Commonwealth Regulations

20. Regulations made under the Agricultural and Veterinary Chemicals (Administration) Act 1992

Agricultural and Veterinary Chemicals (Administration) Amendment Regulations 2006 (No 1) (SLI 2006 No 89)

These Regulations amend the Agricultural and Veterinary Chemicals (Administration) Regulations 1995, which provide a framework of controls relating to the exportation of chemicals, as required under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention).²⁴ The amendments primarily reflect changes to the Rotterdam Convention implementing controls on certain active constituents or chemical products containing those active constituents that were agreed by Parties at the first meeting of the Conference of Parties in 2004.

The Regulations commenced on 12 June 2006, being the date the amendments to the Rotterdam Convention entered into force for Australia.

21. Regulations made under the Air Navigation Act 1920

Air Navigation (Confidential Reporting) Regulations 2006 (SLI 2006 No 371)

Paragraph 8.2 of Annex 13 to the Convention on International Civil Aviation (the Chicago Convention)²⁵ recommends that states establish a voluntary confidential incident reporting system to facilitate collecting of information that may not be

²² [1995] ATS 38.

²³ [2001] ATS 7.

²⁴ (1999) 38 ILM 1, [2004] ATS 22.

²⁵ Above n 1.

obtained through a mandatory reporting system. These Regulations establish such a scheme, known as REPCON (Report Confidentially), which allows a person who becomes aware of safety concerns in the Australian aviation industry to report these concerns confidentially.

REPCON is administered by the statutory office of the Executive Director of Transport Safety Investigation, who is responsible for reviewing reports to determine what information in reports should be included in databases maintained for REPCON. The Executive Director also determines whether any information from reports should be disclosed, having regard to international standards and recommended practices in Annex 13 to the Chicago Convention. As required by Annex 13, reports made under the scheme cannot be admitted in evidence or relied upon for administrative decision-making or disciplinary action.

The Regulations commenced on 29 January 2007.

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

Charter of the United Nations (Sanctions) Amendment Regulations 2006 (No 1) (SLI 2006 No 299)

These Regulations amend a series of Regulations made under the Charter of the United Nations Act 1945 implementing United Nations Security Council (UNSC) sanctions adopted under Chapter VII of the UN Charter in Australian domestic law.

The Regulations:

- introduce a prohibition on the importation of rough diamonds into Australia from or originating in Côte d'Ivoire as required by United Nations Security Council Resolution (UNSCR) 1643 (2005);
- introduce an asset-freezing regime for persons designated by the UNSC Committees administering the UN sanctions in relation to Côte d'Ivoire the Democratic Republic of the Congo (DRC) and Sudan;
- expand the prohibition on the sale or supply of arms or related matériel and the prohibition on the provision of assistance, advice or training relating to military activities to any recipient in the DRC;
- expand the prohibition on the sale or supply of arms or related matériel and the prohibition on the provision of assistance, advice or training relating to military activities to all parties to the N'djamena Ceasefire Agreement in Sudan;
- rename the Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003 to the Charter of the United Nations (Sanctions – Iraq) Regulations 2006 and amend the prohibition on the sale or supply of arms or related matériel, and the prohibition on the provision of assistance, advice or training relating to military activities to any recipient in Iraq;
- clarify exceptions to the abovementioned sanctions regimes as well as the sanctions regimes relating to Liberia and Sierra Leone; and

- repeal the Charter of the United Nations (Sanctions – Rwanda) Regulations 1994.

The Regulations commenced on 18 November 2006.

Charter of the United Nations (Sanctions – Democratic People's Republic of Korea Regulations 2006 (SLI 2006 No 283)

These Regulations implement Australia's obligations under UNSCR 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, goods related to weapons of mass destruction (WMD), or the provision of related technical training, advice, services or assistance relating to such goods, to the DPRK;
- a prohibition on the procurement of such goods or training from the DPRK;
- a prohibition on the use of Australian ships or aircraft to assist in sanctioned activities;
- a prohibition on the export of luxury goods to the DPRK; and
- an asset-freezing regime applying to persons designated by the Security Council Committee established under UNSCR 1718 as being involved in the DPRK's nuclear, WMD and ballistic missile programs.

The Regulations commenced on 10 November 2006.

Charter of the United Nations (Sanctions – Lebanon) Regulations 2006 (SLI 2006 No 300)

The Regulations implement Australia's obligations under UNSCR 1701 (2006) imposing sanctions against Lebanon. The sanctions imposed by the Regulations are:

- a prohibition on the export of arms and related matériel, or technical training or assistance relating to arms and related matériel, to any recipient in Lebanon, except as authorised by the United Nations Interim Force in Lebanon (UNIFIL) or the Government of Lebanon; and
- a prohibition on the use of Australian ships or aircraft to assist in sanctioned activities.

The Regulations commenced on 18 November 2006.

Charter of the United Nations (Sanctions – Rwanda) Regulations 2006 (SLI 2006 No 301)

The Regulations implement Australia's obligations under UNSCR 918 (1994) and 1011 (1995) imposing sanctions against Rwanda, replacing regulations that were repealed by the Charter of the United Nations (Sanctions) Amendment Regulations 2006 (No 1). The sanctions imposed by the Regulations are:

- a prohibition on the export of arms and related matériel to any recipient in Rwanda, except certain supplies to the Government of Rwanda that are

notified in advance to the UNSC Committee established under UNSCR 918; and

- a prohibition on the use of Australian ships or aircraft to assist in sanctioned activities.

The Regulations commenced on 18 November 2006.

Charter of the United Nations (Sanctions – Somalia) Regulations 2006 (SLI 2006 No 302)

The Regulations implement Australia's obligations under UNSCR 733 (1992), 751 (1992), 1425 (2002) and 1474 (2003) imposing sanctions against Somalia, replacing regulations that were repealed by the Charter of the United Nations (Sanctions) Amendment Regulations 2006 (No 1). The sanctions imposed by the Regulations are:

- a prohibition on the export of arms and related matériel (subject to certain humanitarian and protective exceptions), and the provision of assistance, advice or training relating to military activities, to any recipient in Somalia;
- a prohibition on the use of Australian ships or aircraft to assist in sanctioned exports.

The Regulations commenced on 18 November 2006.

23. Regulations made under the Chemical Weapons (Prohibition) Act 1994

Chemical Weapons (Prohibition) Amendment Regulations 2006 (No 1) (SLI 2006 No 313)

The Regulations make a number of amendments to the Chemical Weapons (Prohibition) Regulations 1997, which implements Australia's obligations under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention).²⁶ The amendments:

- reduce the threshold amount at which certain highly toxic chemicals considered to have both chemical warfare and industrial applications (listed in Part A of Schedule 2 to the Chemical Weapons Convention) are required to be declared; and
- provide a mechanism by which amendments to the Chemical Weapons Convention can be set out in the Chemical Weapons (Prohibition) Regulations 1997, for the purposes of including those amendments in the definition of 'Convention' in the Chemical Weapons (Prohibition) Act 1994, and adopt under this mechanism two technical amendments made to the Verification Annex of the Chemical Weapons Convention on 15 January 1999 and 14 October 2004.

²⁶ (13 January 1993), reprinted in 32 ILM 800, [1997] ATS 3.

The Regulations commenced on 2 December 2006.

24. Regulations made under the Criminal Code Act 1995

Criminal Code Amendment Regulations 2006 (No 2) (SLI 2006 No 220)

The Regulations amend the Criminal Code Regulations 2002 to ensure that the organisation known as Al Qa'ida 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 15 July 2006.

Criminal Code Amendment Regulations 2006 (No 3) (SLI 2006 No 221)

The Regulations amend the Criminal Code Regulations 2002 to ensure that the organisation known as Jemaah Islamiyah (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 26 August 2006.

Criminal Code Amendment Regulations 2006 (No 4) (SLI 2006 No 276)

The Regulations amend the Criminal Code Regulations 2002 to ensure that the organisation known as Abu Sayyaf Group 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 3 November 2006.

Criminal Code Amendment Regulations 2006 (No 5) (SLI 2006 No 277)

The Regulations amend the Criminal Code Regulations 2002 to ensure that the organisation known as the Jamiat ul-Ansar 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 3 November 2006.

Criminal Code Amendment Regulations 2006 (No 6) (SLI 2006 No 278)

The Regulations amend the Criminal Code Regulations 2002 to ensure that the organisation known as the Armed Islamic Group (GIA) 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 3 November 2006.

Criminal Code Amendment Regulations 2006 (No 7) (SLI 2006 No 279)

The Regulations amend the Criminal Code Regulations 2002 to ensure that the organisation known as the Salafist Group for Call and Combat (GSPC) 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 3 November 2006.

25. Regulations made under the Customs Act 1901

Customs Amendment Regulations 2006 (No 6) (SLI 2006 No 373)

These Regulations amend the Customs Regulations 1926 (the Principal Regulations) to prescribe record-keeping obligations on producers and exporters of goods to New Zealand in order to fulfil Australia's obligations under the Australia New Zealand Closer Economic Relations Trade Agreement.²⁷

The record-keeping obligations specify the types of records that must be kept, the time for which the records must be kept and the manner in which the records must be kept.

The Regulations commenced on 1 January 2007.

Customs (Australia-US Free Trade Agreement) Amendment Regulations 2006 (No 1) (SLI 2006 No 330)

The Regulations amend Schedules 1 and 2 of the Customs (Australia-US Free Trade Agreement) Regulations 2004 (the Principal Regulations) to incorporate amendments to Annexes 4-A and 5-A of the Australia-US Free Trade Agreement (the Australia-US FTA).²⁸ These amendments result from the third review of the Harmonized Commodity Description and Coding System (the Harmonized System) by the World Customs Organisation.

Division 1C of Part VIII of the Customs Act 1901 and the Principal Regulations fulfil Australia's obligations under Chapters 4 and 5 of the Australia-US FTA. These Chapters and their corresponding Annexes set out the product specific requirements for clothing and textiles according to the tariff classifications of the Harmonised System, for the purposes of applying rules of origin. These principles then allow Australia to determine whether goods imported into Australia are of United States origin and therefore eligible for preferential rates of customs duty.

The amending Regulations commenced on 1 January 2007. This is the date on which the Harmonized System third review changes and the proposed amendments to Annexes 4-A and 5-A of the Agreement entered into force.

Customs (New Zealand Rules of Origin) Regulations 2006 (SLI 2006 No 374)

The Regulations prescribe matters relating to the rules of origin that are required to be prescribed under new Division 1E of Part VIII of the Customs Act 1901, which

²⁷ [1983] ATS 2.

²⁸ [2005] ATS 1.

was inserted by the Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006 (the NZROO Amendment Act).

The Regulations detail new classification requirements to determine whether goods imported into Australia from New Zealand are New Zealand originating goods eligible for preferential customs treatment.

The Regulations:

- set out a table detailing the product-specific requirements relevant to each tariff classification for goods;
- explain the method used to determine the regional value content of goods for the purposes of some of the product-specific requirements;
- specify the valuation rules for different classes of goods; and
- prescribe other matters that are required to be prescribed under new Division 1E.

The Regulations commenced upon the commencement of Schedule 1 to the NZROO Act on 1 January 2007.

Customs (Prohibited Exports) Amendment Regulations 2006 (No 1) (SLI 2006 No 195)

The Regulations introduce export controls on an additional six chemicals. Additionally, the Regulations amend the description of five chemicals subject to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention),²⁹ which are already controlled under the Customs (Prohibited Exports) Regulations 1958.

These changes are in accordance with a decision by the Conference of Parties to the Rotterdam Convention made in September 2004 to include further chemicals, and amend the listing of chemicals already listed, as subject to export control under Annex III of the Rotterdam Convention.

The Regulations commence on 12 June 2006.

Customs (Prohibited Exports) Amendment Regulations 2006 (No 3) (SLI 2006 No 281)

These Regulations amend the Customs (Prohibited Exports) Regulations 1958 (the Principal Regulations) to implement sanctions against the Democratic People's Republic of Korea (DPRK) imposed by UNSCR 1718 (2006).

The Regulations insert new regulation 13CO into the Principal Regulations to prohibit exportation of the following items to the DPRK:

- arms and related matériel (other than goods listed in the Defence and Strategic Goods List mentioned in regulation 13E of the Principal Regulations);

²⁹ Above n 24.

- goods capable of use in the development, production, or stockpiling of nuclear, biological or chemical weapons, or the development or production of missiles capable of delivering such weapons; and
- goods included on the luxury goods list determined by the Foreign Minister under regulation 17 of the Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2006.

The Regulations commenced on 3 November 2006.

Customs (Prohibited Exports) Amendment Regulations 2006 (No 4) (SLI 2006 No 289)

The Regulations amend the Customs (Prohibited Exports) Regulations 1958 (the Principal Regulations) to implement an arms embargo against Lebanon imposed by UNSCR 1701 (2006).

The Regulations insert new regulation 13CP into the Principal Regulations to prohibit the exportation of arms and related matériel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts, whether or not originating in Australia (other than goods listed in the Defence and Strategic Goods List mentioned in regulation 13E of the Principal Regulations).

This prohibition does not apply to arms and related matériel authorised by the Government of Lebanon or by the United Nations Interim Force in Lebanon or where the written permission of the Australian Foreign Minister or an authorised person is shown to a Collector of Customs.

The Regulations commenced on 18 November 2006.

Customs (Prohibited Imports) Amendment Regulations 2006 (No 4) (SLI 2006 No 265)

The Regulations amend the Customs (Prohibited Imports) Regulations 1956 (the Principal Regulations) relating to the importation of rough diamonds from Sierra Leone, and from Côte d'Ivoire.

Sierra Leone

The Regulations repeal Regulation 4N of the Principal Regulations and remove the prohibition on the importation of rough diamonds from Sierra Leone in line with the announcement by the President of the Security Council on 5 June 2003 that the previous UN import ban under United Nations Security Council Resolution 1306 (2000) would not be renewed.

The importation of rough diamonds from Sierra Leone 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.

Côte d'Ivoire

The amending Regulations introduce into the Principal Regulations a new Regulation 4N. Regulation 4N imposes an absolute prohibition on the importation of rough diamonds from Côte d'Ivoire, thus giving effect to UNSCR 1643 (2005).

The Regulations commenced on 21 October 2006.

Customs (Prohibited Imports) Amendment Regulations 2006 (No 5) (SLI 2006 No 282)

The Regulations amend the Customs (Prohibited Imports) Regulations 1958 (the Principal Regulations) to implement sanctions against the Democratic People's Republic of Korea (DPRK) imposed by UNSCR 1718 (2006).

UNSCR 1718 requires that all member states prevent the procurement by their nationals of specified military equipment and spare parts, as well as specified goods that could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programs.

The Regulations insert new regulation 4Y into the Principal Regulations to prohibit the importation from the DPRK of:

- (a) battle tanks;
- (b) armoured combat vehicles;
- (c) large-calibre artillery systems;
- (d) combat and military aircraft;
- (e) attack helicopters;
- (f) warships;
- (g) missiles and missile systems;
- (h) matériel related to any of the goods mentioned in paragraphs (a) to (g), including parts; and
- (i) goods capable of use in the development, production, or stockpiling of nuclear, biological or chemical weapons, or the development or production of missiles capable of delivering such weapons.

Importation is permitted if the written permission of the Foreign Minister or an authorised person is produced to a Collector at or before the time of importation.

The Regulations commenced on 3 November 2006.

26. Regulations made under the Extradition Act 1988

Extradition (Malaysia) Regulations 2006 (SLI 2006 No 290)

The Regulations provide that Malaysia is to be declared an 'extradition country' for the purposes of the Extradition Act 1988 (the Act). The Regulations give effect in Australian domestic law to the Treaty Between the Government of Australia and the Government of Malaysia on Extradition and an Exchange of Notes Between the

Government of Australia and the Government of Malaysia on the Treaty on Extradition.³⁰

The Regulations commenced on 28 December 2006.

Extradition (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography) Regulations 2006 (SLI 2006 No 308)

The Regulations declare states parties to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (the Optional Protocol)³¹ to be extradition countries for the purposes of the Extradition Act 1988. A list of states parties is provided in Schedule 2 of the Regulations. The Regulations allow Australia to make and receive extradition requests to and from a state party to the Optional Protocol for an offence specified in the Optional Protocol.

The Optional Protocol requires states parties to ensure that their criminal or penal law covers certain prohibited activities. These include activities such as child prostitution, child pornography, the sale of children for the purpose of sexual exploitation or forced labour, and improperly inducing consent (as an intermediary) for the adoption of a child in violation of applicable international legal instruments on adoption.

The Regulations commenced on 8 February 2007.

Extradition (Suppression of the Financing of Terrorism) Regulations 2006 (SLI 2006 No 6)

The Regulations declare states parties to the International Convention for the Suppression of the Financing of Terrorism (the Convention)³² to be extradition countries for the purposes of the Extradition Act 1988. A list of states parties is provided in Schedule 2. The Regulations allow Australia to make and receive extradition requests to and from a state party to the Convention for an offence specified in the Convention. The Convention requires that states parties adopt criminal offences in their domestic law for the terrorist financing offences set out in Article 2 of the Convention.

The Regulations commenced on 17 February 2006.

27. Regulations made under the Family Law Act 1975

Family Law Amendment Rules 2006 (No 1) (SLI 2006 No 177)

The Regulations clarify that Chapter 7 of the Family Law Rules 2004 applies to the service of documents in Australia and non-convention countries. A non-convention country is a country with which Australia does not have an applicable convention

³⁰ [2006] ATS 20.

³¹ GA Res 54/263, Annex II, UN GAOR 54th Sess, Supp (No 49) 6, UN Doc A/54/49 (2000), [2007] ATS 6.

³² GA Res 109, UN GAOR, 54th Sess, Supp (No 49) UN Doc A/54/49 (Vol I) (1999), reprinted in 39 ILM 270 (2000), [2002] ATS 23.

on service of documents. The Regulations also set out the process to be followed for an affidavit in support of an application to adduce evidence from a witness in a foreign country by electronic communication.

The Regulations commenced on 1 July 2006.

Family Law (Hague Convention on Inter-country Adoption) Amendment Regulations 2006 (No 1) (SLI 2006 No 96)

The Regulations amend the Family Law (Hague Convention on Inter-country Adoption) Regulations 1998 (the Principal Regulations), which give effect in Australian law to the Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption.³³ The Convention provides for the recognition of adoption decisions between Convention countries. The Regulations add 14 countries (Azerbaijan, Belarus, Belgium, China, Guatemala, Guinea, Hungary, India, Malta, Portugal, San Marino, South Africa, Thailand, and Uruguay) to the list of Convention countries specified in Schedule 2 of the Principal Regulations.

The Regulations commenced on 9 May 2006.

28. Regulations made under the Federal Court of Australia Act 1976

Federal Court Amendment Rules 2006 (No 2) (SLI 2006 No 203)

The Regulations amend the Federal Court Rules, substituting a new Order 8 for service of court documents outside Australia. Division 1 of Order 8 sets out when an originating process and other court documents may be served outside Australia, the method of service, substituted service and proof of service. Division 2 sets out the processes for service through the diplomatic channel or by transmission to a foreign government.

The Regulations commenced on 1 August 2006.

29. Regulations made under the Foreign Acquisitions and Takeovers Act 1975

The following Regulations were enacted following a review of Australia's foreign investment screening regime in relation to business investment, completed in accordance with the Australian government's obligations under the Australia-US Free Trade Agreement.³⁴

Foreign Acquisitions and Takeovers Amendment Regulations 2006 (No 1) (SLI 2006 No 286)

The Regulations amend the Foreign Acquisitions and Takeovers Regulations 1989 (the Principal Regulations) to exempt foreign custodian companies from the operation of the Foreign Acquisitions and Takeovers Act 1975 (the Act). Foreign custodian companies are foreign companies that perform a trustee role by holding the legal interest in shares or land on behalf of their client investors who hold an equitable interest. Under the amendments, foreign custodian companies will be

³³ (1993) 32 ILM 1134, [1998] ATS 21.

³⁴ [2005] ATS 1.

exempt from the Act where custodians acquire interests in shares in corporations or in Australian urban land (to which the Act applies) when acting on the direction of their clients. The Act will continue to apply to the foreign client instructing the custodian who acquires an interest to which the Act applies and to custodians when they are not acting at the direction of their clients.

The Regulations commenced on 18 November 2006.

Foreign Acquisitions and Takeovers Amendment Regulations 2006 (No 2)
(SLI 2006 No 316)

The Regulations amend the Foreign Acquisitions and Takeovers Regulations 1989 (the Principal Regulations) to increase three sets of screening thresholds operating under the Foreign Acquisitions and Takeovers Act 1975. The Regulations increase the general asset threshold from \$50 million to \$100 million, sensitive sector US investors thresholds from \$50 million to \$100 million, and foreign offshore takeovers are exempt where the target company has less than \$200 million of assets in Australia and more than 50 per cent of its total assets overseas.

The Regulations commenced on 2 December 2006.

Foreign Acquisitions and Takeovers Amendment Regulations 2006 (No 3)
(SLI 2006 No 364)

The Regulations amend the Foreign Acquisitions and Takeovers Regulations 1989 (the Principal Regulations) to increase four sets of screening thresholds operating under the Foreign Acquisitions and Takeovers Act 1975. The Regulations further increase the sensitive sector US investors thresholds from \$100 million to \$200 million, and also raise the thresholds applying to US government investment in Australian business to \$100 million and in foreign companies to \$200 million.

The Regulations commenced on 14 December 2006.

30. Regulations under the International Transfer of Prisoners Act 1997

International Transfer of Prisoners (Hong Kong) Regulations 2006 (SLI 2006 No 48)

The Regulations declare the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong) to be a transfer country for the purposes of the International Transfer of Prisoners Act 1997 (the Act). Regulation 5 provides that the Act applies to Hong Kong subject to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Australia Concerning Transfer of Sentenced Persons.³⁵

The Regulations commenced on 23 April 2006.

³⁵ [2006] ATS 13.

International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Amendment Regulations 2006 (No 1) (SLI 2006 No 76)

The purpose of the Regulations is to update the list of transfer countries in Schedules 1 and 2 to the International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Regulations 2002 to prescribe Bosnia and Herzegovina, Ecuador and Korea as declared transfer countries for the purposes of the International Transfer of Prisoners Act 1997.

The Regulations commenced on 20 April 2006.

31. Regulations made under the Migration Act 1958

Migration Amendment Regulations 2006 (No 2) (SLI 2006 No 123)

The Regulations amend the Migration Regulations 1994 to maintain provisions prescribing the People's Republic of China (PRC) as a 'safe third country' in respect of Vietnamese refugees and their close relatives and dependants who have settled in PRC since 1979 and arrived in Australia unlawfully after 1 January 1996, with the effect that they cannot apply for a protection visa in Australia by operation of section 91E of the Migration Act 1958.

A Memorandum of Understanding (MOU) signed by Australia and PRC on 25 January 1995 covers Vietnamese refugees who have settled in PRC since 1979 and who are provided with protection and assistance by the PRC government. A new Schedule 12 replaces the old Schedule 12 in its entirety to include the text of the letters exchanged between Australia and the People's Republic of China (PRC) on 17 and 20 March 2006. These letters replace the previous letters dated 15 April 2004 and 16 April 2004 and confirm that the MOU between the two countries remains in force.

The Regulations commenced 1 October 2006.

Migration Amendment Regulations 2006 (No 4) (SLI 2006 No 159)

The Regulations amend the Migration Regulations 1994 to:

- allow representatives of certain international organisations, as recommended by the Minister for Foreign Affairs, to be granted a Diplomatic (Temporary) visa; and
- require that all applicants, including applicants who wish to accompany a person who satisfies the primary criteria for a Domestic Worker (Temporary)-Diplomatic or Consular visa, are to satisfy the primary criteria to be eligible for that visa.

The Regulations commenced 1 July 2006.

32. Regulations made under the Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (Malaysia) Regulations 2006 (SLI 2006 No 292)

The Regulations give effect to the Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters and an Exchange of Notes between the Government of Australia and the Government of Malaysia on the Treaty on Mutual Assistance in Criminal Matters (the Treaty).³⁶ The Treaty obliges Australia and Malaysia 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 assist in investigations, and the restraint, forfeiture and confiscation of proceeds of crime.

The Regulations commenced on 28 December 2006, the day on which the Treaty entered into force.

Mutual Assistance in Criminal Matters (Suppression of the Financing of Terrorism) Regulations 2006 (SLI 2006 No 7)

The Regulations operate to apply the Mutual Assistance in Criminal Matters Act 1987 to a foreign country that is a current state party to the International Convention for the Suppression of the Financing of Terrorism (the Convention),³⁷ subject to the Convention. This allows Australia to make and receive requests to and from a state party to the Convention for mutual assistance with an offence in the Convention.

The Regulations commenced on 17 February 2006.

33. Regulations made under the Nuclear Non-Proliferation (Safeguards) Act 1987

Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2006 (No 1) (SLI 2006 No 284)

The Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 imposes a charge on producers of uranium ore concentrates under certain circumstances. The Nuclear Non-Proliferation (Safeguards) Act 1987 (which gives effect to certain of Australia's obligations under international agreements, including the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons)³⁸ specifies that the charge is due on 1 December each year and that the amount of the charge payable by a producer is \$500,000 or an amount prescribed by the regulations, whichever is the lesser. The amount of the charge, expressed in cents per kilogram of uranium in the uranium

³⁶ [2006] ATS 21.

³⁷ Above n 32.

³⁸ [1974] ATS 16.

ore concentrate produced, is set each year in the Nuclear Non-Proliferation (Safeguards) Regulations 1987.

The Regulations prescribe the amount of charge payable by a producer of uranium ore concentrates as the lesser of \$500,000 or 5.6012 cents per kilogram of uranium in the uranium ore concentrates produced in the previous financial year.

The Regulations commenced on 3 November 2006.

34. Regulations made under the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Methyl bromide is a scheduled substance and is controlled under Schedule 1 to the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989. The Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 currently regulate the supply and end use of methyl bromide through record keeping and reporting systems.

Australia's obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol)³⁹ ensure that stocks of methyl bromide are only sold and used for authorised purposes. Under the Protocol, non-quarantine and pre-shipment (non-QPS) uses of methyl bromide were phased out from 1 January 2005 except where critical use exemptions are granted by parties to the Protocol or an emergency use is granted by parties.

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2006 (No 1) (SLI 2006 No 237)

The purpose of these Regulations is to make changes of a minor or machinery nature to the 2006 Exemption List for non-QPS applications of methyl bromide.

The Regulations commenced on 15 September 2006.

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2006 (No 2) (SLI 2006 No 312)

The purpose of these Regulations is to make changes of a minor or machinery nature to the 2007 Exemption List for non-QPS Applications of methyl bromide.

The Regulations commenced on 1 January 2007.

35. Regulations made under the Patents Act 1990

Patents Amendment Regulations 2006 (No 1) (SLI 2006 No 55)

The Regulations amend the Patent Regulations 1991 (the Principal Regulations) to implement amendments to the Patent Cooperation Treaty (PCT) Rules by updating the English text of the PCT Rules set out in Schedule 2A.

The PCT is an international agreement that simplifies the procedure for the filing of applications for patents internationally. The Regulations amend the Principal Regulations to:

³⁹ (16 September 1987), 1522 UNTS 3, reprinted in (1987) 26 ILM 1550, [1989] ATS 18.

- specify that the English text of the PCT in force for Australia as at 1 April 2006 is the text set out in Schedules 2 and 2A to the Principal Regulations.
- update the text of the PCT Rules to accord with the changes made by the Assembly of the International Patent Cooperation Union at the meeting from 26 September to 5 October 2005. The changes relate to publication of PCT applications and the PCT Gazette in electronic form, the addition of Arabic as a language of publication, and correcting a drafting error in the PCT Rules relating to exceptions to the all-inclusive designation system.

The Regulations commenced on 1 April 2006.

36. Regulations made under the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993

Protection of the Sea (Oil Pollution Compensation Fund) Amendment Regulations 2006 (No 1) (SLI 2006 No 231)

The Protection of the Sea (Oil Pollution Compensation Fund) Regulations 1994 (made under the Protection of the Sea (Oil Pollution Compensation Fund) Act 1993) required persons who received more than 150,000 tonnes of crude oil and heavy fuel in the previous year to advise the Australian Maritime Safety Authority (AMSA) by 1 March in accordance with the form set out in the Schedule. The form had to be accompanied by a statutory declaration declaring that the information was correct and complete.

The Regulations replace the form in the Schedule with a revised form now required by the International Oil Pollution Compensation Funds and requires the form to be submitted to AMSA by 1 April each year.

The Regulations also remove the requirement for a statutory declaration, as this has been made redundant by section 137.2 of the Criminal Code, which provides that it is an offence to give false or misleading information in compliance with a law of the Commonwealth.

The Regulations commenced on 26 August 2006.

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

Social Security (International Agreements) Act 1999 Amendment Regulations 2006 (No 1) (SLI 2006 No 149)

The purpose of the Regulations is to implement the Agreement on Social Security between the Government of Australia and the Government of the Kingdom of Norway (the Agreement)⁴⁰ through a new Schedule 19 to Social Security (International Agreements) Act 1999. The purpose of the Agreement is to provide better welfare protection for people who move between Australia and Norway.

⁴⁰ [2007] ATS 1.

The Regulations commenced on 1 January 2007, the date on which the Agreement came into effect.

38. Regulations made under the Trade Marks Act 1995

Trade Marks Amendment Regulations 2006 (No 1) (SLI 2006 No 356)

The main purpose of the Regulations is to ensure that certain amendments made to the Act by the Trade Marks Amendment Act 2006 apply appropriately to trade marks governed by Part 17A of the Trade Marks Regulations 1995 (the Principal Regulations). Part 17A deals with protected international trade marks under the Protocol Relating to the Madrid Agreement concerning the International Registration of Marks.⁴¹

In accordance with Australia's obligations as Party to the Agreement of Nice Concerning the International Classification of Goods and Services to which Trade Marks are applied,⁴² the Regulations amend three class headings in Schedule 1 to give effect to the changes to the International Classification of Goods and Services approved at the 2005 Special Union for the International Classification of Goods and Services for the Purposes of Registration of Marks.

The Regulations commenced on 19 December 2006.

⁴¹ 828 UNTS 389, [2001] ATS 7.

⁴² [1961] ATS 11.

