

Australian Legislation Concerning Matters of International Law 2009

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1. Asian Development Bank (Additional Subscription) Act 2009 (No. 109 of 2009)

This Act permits the Treasurer to enter, on behalf of Australia, an agreement with the Asian Development Bank (ADB) to purchase an additional 409,480 shares in the ADB (consisting of 16,379 paid-in shares and 393,101 callable shares), as part of the ADB's fifth general capital increase since the Bank's foundation in 1966. The Act also permits payment for the shares to be paid by promissory note.

The Act is very similar to previous legislation permitting additional subscriptions to the ADB, apart from this subscription's size, which is four times greater than the previous subscription in 1995.

According to the ADB, as at 1 April 2009, before ADB's Board of Directors voted to adopt the fifth general capital increase, Australia held 204,740 shares (5.77% of total shares), 217,972 votes (4.92% of total membership) and had an overall capital subscription of \$3.17 billion, of which \$221.93 million was paid-in.¹

The Act commenced on 16 November 2009.

2. Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009 (No. 97 of 2009)

This Act implements Australia's commitments under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area² (AANZFTA), signed in Thailand, on 27 February 2009. The AANZFTA entered into force on 1 January 2010. The agreement includes, inter alia, a commitment to progressively reduce and/or eliminate customs duties as between Parties in accordance with the tariff schedule.

This Act inserts a new Division 1G into the Customs Act 1901. Division 1G is entitled 'ASEAN-Australia-New Zealand (AANZ) originating goods' and it, inter alia, provides that goods will be considered originating goods under the AANZFTA (called 'AANZ originating goods') if they are wholly obtained goods of a Party, or if they are produced entirely in a Party from originating materials only.³ It also sets

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¹ Asian Development Bank, *Asian Development Bank and Australia Fact Sheet*, April 2010 available at <<http://beta.adb.org/publications/asian-development-bank-and-australia-fact-sheet>> (last visited 22 August 2011).

² [2010] ATS 1.

³ 'Originating materials' are AANZ originating goods that are used or consumed in the production of other goods, or indirect materials. 'Indirect materials' are goods or

out when goods will be AANZ originating goods despite being produced entirely or partially from non-originating materials, and when they will be AANZ originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.

This Act commenced on 2 October 2009, with Schedule 1, introducing the new Division 1G commencing on 1 January 2010.

3. Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009 (No. 34 of 2009)

Schedule 5 of the Act amends the Customs Act 1901, specifically Subdivision B of Division 1 of Part XII. Subdivision B confers general regulatory powers on officers, including the power to board certain ships (ss 184A, 185A), the power to chase foreign ships (s 184B) and the power to search ships (s 185).

The United Nations Convention on the Law of the Sea⁴ (UNCLOS) was taken into account when these powers were initially formulated.⁵ The Act amends some of these powers to make them more consistent with UNCLOS. These include:

- Section 184A set out the circumstances in which the commander of a Commonwealth ship or aircraft could request the master of the ship to permit the commander, a member of the commander's crew or an officer to board the master's ship. Under UNCLOS, there is no requirement that such a request be made before a ship can be boarded. The Act amends s 184A to remove the requirement that a commander request that a ship be boarded and to provide for the circumstances in which an officer may board a ship.⁶
- The Act amends s 184B to make it more consistent with the provisions on hot pursuit in UNCLOS. For example, s 184B(1) provided that a commander of a Commonwealth ship or aircraft could chase a foreign ship to any place outside the territorial sea of a foreign country, where the master had not complied with a boarding request under s 184A. The Act amends s 184B(1) so that the circumstances in which a foreign ship may be chased (such as the requirement to give a visual or auditory signal to the ship) are set out in more detail.⁷
- Section 184A(9) provided that ships without nationality could only be boarded if they were outside Australia's contiguous zone or outside another country's territorial sea. Since UNCLOS does not contain the

energy used in the production, testing or inspection of goods, but not physically incorporated in the goods, or goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods.

⁴ [1994] ATS 31.

⁵ Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008, Explanatory Memorandum, [62].

⁶ Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008, Explanatory Memorandum, [63].

⁷ Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008, Explanatory Memorandum, [92].

limitation in relation to being outside Australia's contiguous zone, the Act removes this limitation.⁸

Schedule 5 of the Act commenced on 19 June 2009.

4. Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009 (No. 98 of 2009)

The Act implements Australia's commitments under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area⁹ (AANZFTA), signed in Thailand, on 27 February 2009. The AANZFTA entered into force on 1 January 2010. The agreement includes, inter alia, a commitment to progressively reduce and/or eliminate customs duties as between Parties in accordance with the tariff schedule.

The Act amends the Customs Tariff Act 1995 to provide, variously, free or preferential rates of customs duty for goods that are AANZ originating goods, as well as the phasing in of preferential rates of customs duty and the maintenance of rates of customs duty on certain goods (alcohol, tobacco and petroleum products) equivalent to the rates of excise duty payable on such goods when locally manufactured.

The Act 2009 commenced on 2 October 2009, with Schedule 1 commencing on 1 January 2010. Schedule 2, containing contingent amendments relating to the Carbon Pollution Reduction Scheme, did not commence.

5. Defence Legislation Amendment Act (No. 1) 2009 (No. 46 of 2009)

The Act, among other things, amends the Defence Act 1903 to introduce a discretionary 'Tactical Payment Scheme', providing a new mechanism for making no-liability payments to persons adversely affected by Australian Defence Force operations outside Australia. The Explanatory Memorandum to the Bill states that 'in many areas in which the ADF operates financial compensation for collateral damage to property, injury, or loss of life is often a common expectation of local cultures. Recognition and respect for such customs is vital in building relationships with local communities, and enhances the safety and security of our deployed ADF personnel'.

The scheme is a discretionary, Defence-specific mechanism that operates independently from the Act of Grace payment provisions contained in the Financial Management and Accountability Act 1997, and does not prevent Defence from having recourse to those provisions.

Schedule 1 of the Act, which contains the scheme, commenced on 1 July 2009.

⁸ Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008, Explanatory Memorandum, [103].

⁹ [2010] ATS 1.

6. Defence Legislation (Miscellaneous Amendments) Act 2009 (No. 18 of 2009)

Schedule 1 of the Act amends the Geneva Conventions Act 1957 and Criminal Code Act 1995 in order to implement the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III).¹⁰ Protocol III establishes a third universal and distinctive emblem called a 'Red Crystal' for the Red Cross/Red Crescent Movement.

The amendment to the Geneva Conventions Act requires that the new emblem only be used with the consent of the Minister for Defence. This amendment ensures that the new emblem is one of the emblems protected under the Geneva Conventions Act.¹¹

The Act amends the Criminal Code Act to ensure that the new emblem is covered by existing offences relating to the improper use of the emblems of the Geneva Conventions.

Schedule 1 of the Act commenced on 15 February 2010.

7. Disability Discrimination and Other Human Rights Legislation Amendment Act 2009 (No. 70 of 2009)

This Act amends the Disability Discrimination Act 1992 (DDA) and other legislation such as the Age Discrimination Act 2004 and the Human Rights and Equal Opportunity Act 1986. One of the Act's purposes is to amend the DDA in light of Australia's ratification of the Convention on the Rights of Persons with Disabilities¹² (Disabilities Convention) on 17 July 2008, which entered into force for Australia on 16 August 2008. The Act also implements recommendations made by the Australian Government Productivity Commission's 2004 Review of the Disability Discrimination Act 1992, which predated the Disabilities Convention.

The DDA prohibits discrimination on the basis of disability in a number of areas (work, education, sport); however, the majority of these prohibitions are 'limited application provisions',¹³ which means they only have effect to the extent that they either give effect to the international conventions listed in paragraphs 12(8)(a)-(d), or where they relate to matters external to Australia or to a matter of international concern.¹⁴ The most important amendment this Act makes to the DDA is the

¹⁰ [2010] ATS 6.

¹¹ See Geneva Conventions Act 1957 (Cth) ss 15(ca), 15(1)(e), 15(1)(f).

¹² [2008] ATS 12.

¹³ The 'limited application provisions' are almost all of the parts of the DDA that prohibit discrimination, and encompass Division 1 (Discrimination in work), Division 2 (Discrimination in other areas), Division 2A (Disability standards) and Division 3 (Discrimination involving harassment) of Part 2 other than sections 20, 29 and 30.

¹⁴ See subsection 12(8). The international conventions include, apart from the DDA, the International Labor Organisation's Discrimination (Employment and Occupation) Convention, 1958, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

inclusion of the Disabilities Convention in subsection 12(8), thereby providing an additional basis for the effect of the 'limited application provisions'.

The Act also inserts into the DDA an explicit, positive duty to make 'reasonable adjustments' for a person with a disability (subsection 5(2)). This duty implements the obligation under the Disabilities Convention to ensure that 'reasonable accommodation' is provided to enable the enjoyment of the rights contained in the Convention (see articles 5, 24 and 27). The definition of 'reasonable accommodation' in Art 2 of the Disabilities Convention is:

Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

This definition is implemented, with some amendments, into section 4(1) of the DDA in the definition of 'reasonable adjustment':

reasonable adjustment [means] an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person.

The Explanatory Memorandum for this Act indicates that this definition was intended to be consistent with the definition of 'reasonable accommodation' contained in the Disabilities Convention.

The Act commenced on 8 July 2009. Schedule 2, Items 101, 102, and 106 commenced on 27 March 2006. Schedule 1, Schedule 2, Part 1, Schedule 3, Part 1, Division 1, Schedule 3, Part 2, and Schedule 4 commenced on 5 August 2009. Schedule 3, Items 111-114 commenced on 1 January 2010, and Schedule 2, Items 103-105 commenced on 8 January 2010.

8. Fair Work Act 2009 (No. 28 of 2009)

The object of the Act 'is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians'.¹⁵ The Fair Work Act then lists a number of ways in which it achieves this object, including by 'providing workplace relations laws that ... take into account Australia's international labour obligations'.¹⁶ The international obligations mentioned refer to Australia's international labour obligations under instruments such as ILO Convention (No 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value¹⁷ and the Convention on the Elimination of All Forms of Discrimination against Women.¹⁸

Additionally, the Act gives effect to more specific international obligations. For example, pursuant to s 723, 'a person must not make an unlawful termination application in relation to conduct if the person is entitled to make a general protections court application in relation to the conduct'. A general protections court application is an application for a civil remedy for a contravention of the general

¹⁵ Fair Work Act 2009 (Cth) s 3.

¹⁶ Fair Work Act 2009 (Cth) s 3(a).

¹⁷ [1975] ATS 45.

¹⁸ [1983] ATS 9; Fair Work Bill 2008, Explanatory Memorandum, [2251].

protections (such as workplace rights) offered by Part 3-2 of the Act.¹⁹ This section gives further effect to the ILO Convention (No 158) concerning Termination of Employment at the Initiative of the Employer.²⁰ This Convention provides that a worker's employment shall only be terminated for a valid reason connected with the worker's capacity or conduct or operational requirements. It contains a list of factors which are not valid reasons for termination (for example, the filing of a complaint or proceedings against an employer).

Sections on the Act commenced on various dates from 7 April 2009 to 1 January 2010.

9. Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009 (No. 122 of 2009)

This Act amends the International Arbitration Act 1974 (IA Act). The amendments clarify and extend the jurisdiction of the Australian Federal Court in relation to foreign arbitral awards, to give the Federal Court concurrent jurisdiction with State and Territory courts. The Explanatory Memorandum for the Act states that '[t]hese amendments will assist in ensuring that the Federal Court is well equipped to operate as a regional hub for commercial litigation.'

The Act clarifies that the Federal Court has jurisdiction, along with State and Territory Courts, to enforce foreign awards. The first amendment explicitly includes the Federal Court in the IA Act's definition of 'court'. The Act also inserts a new subsection 8(3), providing that the Federal Court has concurrent jurisdiction with the State and Territory Courts to enforce a foreign arbitral award, as if it were a judgment or award of that Court:

Subject to this Part, a foreign award may, with the leave of the Federal Court of Australia, be enforced in the Federal Court of Australia as if the award were a judgment or order of the Federal Court of Australia.

The Act also inserts a new paragraph 18(c), which makes the Federal Court a 'specified court' under Article 6 of the UNCITRAL Model Law on International Commercial Arbitration. As a specified Court, the Federal Court may appoint arbitrators, challenge an arbitrator, terminate the mandate of an arbitrator, rule on an arbitral tribunal's jurisdiction, and set aside an arbitral award. Previously, only the Courts of the State or Territory were 'specified courts' under Article 6, and their jurisdiction was limited to where the arbitration arose in that State or Territory. By contrast, the Federal Court will be taken to be such a court 'in any case'.

In relation to recognition of arbitral awards under section 35, the Act adds the Federal Court as a Court 'designated for the purposes of Article 54' (subsection 35(3)) and enables an award to be enforced in the Federal Court as if it were a judgment or order of the Federal Court (subsection 35(4)).

The Act commenced on 7 December 2009, with Schedule 5 commencing on 4 January 2010.

¹⁹ Fair Work Act 2009 (Cth) s 370(2).

²⁰ [1994] ATS 4; Fair Work Bill 2008, Explanatory Memorandum, [2702].

10. Foreign States Immunities Amendment Act 2009 (No. 89 of 2009)

The Foreign States Immunities Amendment Act 2009 amends the Foreign States Immunities Act 1985 by empowering the Governor-General to make regulations modifying its operation with respect to a foreign State assisting the Australian Government or a State or Territory Government to manage domestic emergencies or disasters (whether natural or otherwise). The Foreign States Immunities Act 1985 provides a regime for the immunity of foreign States from the civil jurisdiction of Australian courts. This immunity is subject to various exceptions listed in the Act. These exceptions include proceedings concerning the death of or personal injury to a person, or loss of or damage to tangible property, caused by an act or omission that occurs in Australia.

The amendment authorises regulations being made lifting the exception to the foreign State's immunity in proceedings concerning the death of or personal injury to a person, or loss of or damage to tangible property. The Act therefore enables a foreign State and its emergency management personnel to be immune in tort proceedings under the Act for acts or omissions that occur in the course of the foreign State providing emergency management assistance to Australia.

The Act removed a barrier to the conclusion of agreements with other countries for the exchange of emergency management resources, including personnel and/or equipment. While the amendments limited the ability of individuals to sue a foreign State or its personnel, the provision of this immunity would not negate any liability of the Australian Government or State and Territory Governments. Further, as the immunity will only apply to acts or omissions of the foreign State in the course of providing emergency management assistance or facilities, any negligence by a foreign official outside of their duties would remain subject to the jurisdiction of the Australian courts. The immunities under the Act also do not apply in any criminal proceedings.

The regulation making power covers foreign States that send their personnel and/or equipment to participate in the ordinary course of emergency management activities, including preparatory and preventive activities, prior to the actual occurrence of an emergency or disaster.

The act commenced on 19 September 2009.

11. International Monetary Agreements Amendment (Financial Assistance) Act 2009 (No. 57 of 2009)

The purpose of the International Monetary Agreements Amendment (Financial Assistance) Act 2009 was to amend the International Monetary Agreements Act 1947 (IMA Act) to establish a framework for Australia to provide financial assistance to a country in support of World Bank or Asian Development Bank programs.

The Act enables the Treasurer, on behalf of Australia, to enter into agreements to lend money or enter into currency swaps in circumstances where the World Bank or the Asian Development Bank requests that Australia provide assistance in support of a World Bank or Asian Development Bank program, and where at least one other country or organisation has provided or intends to provide assistance to

the recipient country in response to the same or a similar World Bank or Asian Development Bank program. Agreements must provide for Australia to be able to require early repayment in the event of the suspension, or premature termination, of the World Bank or Asian Development Bank program.

Amendments in the Act are based closely on provisions currently in the IMA Act. The IMA Act currently contains a provision that enables the Treasurer to lend money or enter into a currency swap with a country in support of an International Monetary Fund (IMF) program. Amending the IMA Act to include World Bank and Asian Development Bank programs was intended to ensure that Australia is able to quickly respond to requests to participate in international cooperation efforts especially during times of crisis.

The Act provides for the Treasurer to release publicly and table in each House of the Parliament a national interest statement relating to an agreement entered into under the Bill. Statements will include a description of the nature and terms of an agreement and set out why it is in the national interest having regard, in particular, to foreign policy, trade and economic interests. Some aspects of agreements may not be able to be made public. For example, details of interest rates charged could, if made public, have an impact on other loan-raising activities by the borrowing country. When tabled, national interest statements will be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report.

The Act commenced on 26 June 2009.

12. International Tax Agreements Amendment Act (No. 1) 2009 (No. 105 of 2009)

The Act amends the International Tax Agreements Act 1953 to give the force of law in Australia to the Agreement between the Government of Australia and the Government of the British Virgin Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals, and the Agreement between the Government of Australia and the Government of the Isle of Man for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments.

The British Virgin Islands agreement is an agreement for the allocation between Australia and the British Virgin Islands of taxing rights with respect to certain income of individuals. The Isle of Man agreement is an agreement for the allocation between Australia and the Isle of Man of taxing rights with respect to certain income of individuals and for the establishment of a mutual agreement procedure in relation to transfer pricing adjustments. A copy of these agreements is attached as schedules to the International Tax Agreements Act 1953.

The Act commenced on 8 October 2009.

13. Resale Royalty Right for Visual Artists Act 2009 (No. 125 of 2009)

The Resale Royalty Right for Visual Artists Act 2009 provides for the establishment of a resale royalty right for visual artists and an accompanying statutory scheme. Section 14 of the Act sets out the residency requirements that a potential right holder must meet in order to be eligible to hold the right at the time

of any commercial resale. Under section 14, an individual satisfies the residency test at a particular time if, at that time, the individual is:

- (a) an Australian citizen; or
- (b) a permanent resident of Australia; or
- (c) a national or citizen of a country prescribed as a reciprocating country.

A country will be prescribed as a reciprocating country in regulations to the Act on the basis of their implementation of the Article 14ter of Berne Convention for the Protection of Literary and Artistic Works.

Part 2 of the Act, which contains the residency test, commenced on 9 June 2010.

14. Transport Safety Investigation Amendment Act 2009 (No. 20 of 2009)

The Transport Safety Investigation Amendment Act 2009 amended the Transport Safety Investigation Act 2003 (TSI Act), and established the Australian Transport Safety Bureau (ATSB). The ATSB came into being on 1 July 2009. The measures in the Act set out the ATSB's independence as the national safety investigation agency. The independence of the national accident investigation authority is consistent with the requirements of the International Convention on Civil Aviation (Chicago Convention). Standard 5.4 of Annex 13 to the Chicago Convention states that '[t]he accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct'.

Enhanced independence for the ATSB resulted from the following amendments under the Act:

- The ATSB has operational independence with respect to the exercise of its investigation powers and functional independence with respect to the administration of its resources. The creation of a statutory agency gave the ATSB responsibilities in its own right under the Public Service Act 1999 and the Financial Management and Accountability Act 1997 and discretion with respect to the management of its staff and resources consistent with these Acts.
- The ATSB is not subject to a direction from anyone with respect to the exercise of its powers and performance of its functions, other than the ability for the Minister to require the ATSB to investigate a particular matter.
- Commissioners of the ATSB are appointed by the Minister, and are responsible for administering the functions of the TSI Act and exercising its investigation powers. Under the old scheme, the position of the Executive Director of Transport Safety Investigation was appointed by the Secretary of the relevant Government Department.

The Act commenced on 26 March 2009.

15. Regulations made under the Charter of the United Nations Act 1945 (Cth)

Section 6 of the Charter of the United Nations Act 1945 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 Charter of the United Nations²¹ (Charter), consistent with Australia's obligations under Article 25 of the Charter.

Charter of the United Nations (Sanctions) Amendment Regulations 2009 (No 1)

The Regulations correct drafting errors in the Charter of the United Nations (Sanctions – Afghanistan) Regulations 2008. They rename the Principal Regulations as the Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008, to reflect the terms used in the UNSC Resolutions. The Regulations also make a consequential amendment to the Charter of the United Nations (Dealing with Assets) Regulations 2008 to reflect this name change.

The Regulations commenced on 10 February 2009.

Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Amendment Regulations 2009 (No 1)

The purpose of the Regulations is to update the Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008 to conform with UNSC Resolution 1735 (2006).

The Principal Regulations implement UNSC Resolutions 1735 (2006), 1390 (2002), and 1267 (1999), prohibiting any sanctioned supply to Al-Qaida, Osama Bin Laden, the Taliban or a person or entity designated by the UNSC Committee established under Resolution 1267. They also prohibit the provision of technical advice, assistance or training related to military activities to such persons. In addition, the Principal Regulations impose an asset freezing regime.

UNSC Resolution 1452 (2002) provided in paragraph 1(a) that the asset freezing measures would not apply to assets or resources for basic expenses. States were to allow 48 hours from notifying the Committee of an intention to authorise funds for basic expenses before permitting this to occur. UNSC Resolution 1735 (2006) extends this period to three working days. The Regulations give effect to this change.

The Regulations commenced on 23 June 2009.

Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Amendment Regulations 2009 (No 1)

The Regulations update the Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008, to conform with decisions of the UNSC, in particular UNSC Resolution 1874 (2009), extending certain prohibitions contained in UNSC Resolution 1718.

²¹ [1945] ATS 1.

Resolution 1874 and the Regulations, among other things, extend the prohibition on the sale, supply or transfer to the Democratic People's Republic of Korea (DPRK) of certain specified military goods and related training, advice, services, or assistance to all arms and related materiel (with a small arms and light weapons exception). States must notify the UNSC Committee established at least five days prior to any sale, supply or transfer of small arms or light weapons to the DPRK.

The Resolution and Regulations also extend the existing prohibition on procurement from the DPRK of certain military goods to procurement of related technical training, advice, services or assistance. The Resolution requires States to prohibit financial transactions relating to such goods. The Resolution and Regulations prohibit in certain circumstances the provision of bunkering services to DPRK vessels.

The Regulations commenced on 11 July 2009.

Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Amendment Regulations 2009 (No 2)

The Regulations further update the Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008. They clarify that a person contravenes the Principal Regulations if the person makes a sanctioned supply of the relevant arms and related materiel and this is not authorised by the Minister for Foreign Affairs in accordance with regulation 14B. This accords with UNSC Resolution 1874.

The Regulations commenced on 31 July 2009.

Charter of the United Nations (Sanctions – Iran) Amendment Regulations 2009 (No 1)

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

The Resolutions are concerned with three categories of export sanctioned goods. The third category is any goods not specified in the UNSC documents, but which a State nevertheless determines would contribute to Iran's proliferation-sensitive nuclear or missile programs. The Principal Regulations had the effect that this category of goods was subject to certain pre- and post-supply conditions, when in fact the UNSC Resolutions do not have such conditions, only an obligation to prohibit such supply, sale or transfer. The Regulations amend this. In addition, the Principal Regulations required that the Minister be satisfied that goods were export sanctioned goods if they would contribute to certain activities. The Regulations establish a two stage process: identification that the goods could so contribute and assessment that if they were supplied to a certain end user for a certain end purpose, they would so contribute.

The Regulations commenced on 16 April 2009.

Charter of the United Nations (Sanctions – Somalia) Amendment Regulations 2009 (No 1)

The Regulations amend the Charter of the United Nations (Sanctions – Somalia) Regulations 2008 and implement Australia's extended obligations under UNSC Resolutions 1844 (2008), 1846 (2008), and 1851 (2008).

The Regulations prohibit the supply, sale or transfer of weapons and military equipment and the supply of technical assistance or training, financial and other assistance related to military activities or the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment to the individuals or entities designated by the UNSC Somalia Sanctions Committee. The Regulations also implement targeted financial sanctions against individuals and entities as designated by the UNSC Committee.

The Regulations establish new exceptions to the arms embargo in Resolution 733 (1992) and Resolution 1425 (2002). The Regulations amend existing permit conditions such that the embargo does not apply to supplies of technical assistance to Somalia, nor to weapons and military equipment for use of Member States and regional organisations, for the fight against piracy and armed robbery at sea and for enhancing Somalia's capacity to ensure coastal and marine security.

The Regulations commenced on 16 May 2009.

16. Regulations made under the Customs Act 1901

Customs (ASEAN – Australia – New Zealand Rules of Origin) Regulations 2009

Division 1G of the Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009 gives effect to Australia's obligations under Chapter 3 of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area²² (ASEAN FTA). Chapter 3 deals with rules of origin. Division 1G sets out rules which determine whether goods imported into Australia originate from ASEAN, Australia or New Zealand. The Regulations prescribe matters relating to rules of origin that are required under Division 1G.

Schedule 1, in conjunction with regulations 2.1 and 3.1, contains product-specific rules of origin applicable to the goods listed. Part 4 sets out methods used to determine the regional value content of the goods, for the purpose of some product-specific rules. Part 5 sets out valuation rules for different classes of goods.

The Regulations commenced on 1 January 2010.

Customs Amendment Regulations 2009 (No 6)

These Regulations amend the Customs Regulations 1926 to give effect to Australia's obligations under Chapter 3 of the ASEAN FTA.

The Regulations provide for refund, rebate or remission of duty on goods that are determined to be ASEAN, Australia or New Zealand originating goods. ASEAN, Australia or New Zealand originating goods are goods from a party to the

²² [2010] ATS 1.

Agreement which satisfy the new rules of origin, as set out in the Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009 in accordance with the ASEAN FTA.

The Regulations commenced on 1 January 2010.

Customs Tariff Amendment Regulations 2009 (No 1)

These Regulations amend the Customs Tariff Regulations 2004 to give effect to Australia's obligations under Chapter 3 of the ASEAN FTA.

In accordance with the ASEAN FTA, most ASEAN, Australia or New Zealand originating goods are free of customs duty. However, certain classes of goods do not immediately attract this benefit, but are phased down to this over time. The ASEAN FTA sets tariff classifications according to the 2002 version of the Harmonized Commodity Description and Coding System, a worldwide classification system. The Regulations prescribe that goods are to be subject to the phasing rates in this System.

The Regulations commenced on 1 January 2010.

Customs Amendment Regulations 2009 (No 8)

The Regulations give effect to Australia's decision, reflected in the ASEAN FTA, to recognise Vietnam's full market economy status. The Regulations add Vietnam to the list of countries not subject to the additional anti-dumping provisions applicable to countries that have an economy in transition.

The Regulations commenced on 16 December 2009.

Customs Amendment Regulations 2009 (No 7)

The Regulations amend the Customs Regulations 1926 to give effect to Australia's obligations under the Thailand-Australia Free Trade Agreement²³ in relation to safeguard goods, goods that are given special treatment under the Agreement.

The Regulations provide for refunds of the customs duty paid on Thai originating goods that are safeguard goods and were imported into Australia after 1 January 2009.

The Regulations commenced on 28 November 2009.

17. Regulations made under the Extradition Act 1988

The Extradition Act 1988 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. Subparagraph 11(1)(b) of the Act provides that the regulations may make provision for application of the Act subject to certain limitations, conditions, exceptions or qualifications.

Several Regulations declared particular countries or groups of countries (by reference to their being parties to an identified treaty) to be 'extradition countries'

²³ [2005] ATS 2.

for the purpose of the Act. The purpose of these Regulations is to facilitate the establishment of extradition arrangements with the countries listed.

The extradition Regulations with respect to specific countries are:

- Extradition (Bosnia and Herzegovina) Regulations 2009: The Regulations commenced on 13 October 2009.
- Extradition (Macedonia) Regulations 2009: The Regulations commenced on 14 October 2009.²⁴
- Extradition (Montenegro) Regulations 2009: The Regulations commenced on 10 October 2009.
- Extradition (Serbia) Regulations 2009: The Regulations commenced on 10 October 2009.

The extradition Regulations with respect to groups of countries are:

- Extradition (Bribery of Foreign Public Officials) Amendment Regulations 2009 (No 1): The Regulations declare countries in which the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions²⁵ is in force to be extradition countries. The Regulations commenced on 14 October 2009.
- Extradition (Convention against Corruption) Amendment Regulations 2009 (No 1): The Regulations declare countries in which the United Nations Convention against Corruption²⁶ is in force to be extradition countries. The Regulations commenced on 14 October 2009.
- Extradition (Currency) Regulations 2009: The Regulations declare countries in which the International Convention for the Suppression of Counterfeiting Currency and the Protocol to that Convention²⁷ is in force to be extradition countries. The Regulations commenced on 14 October 2009.
- Extradition (Narcotic Drugs) Regulations 2009: The Regulations declare countries in which the Single Convention on Narcotic Drugs,²⁸ as amended, is in force to be extradition countries. The Regulations commenced on 14 October 2009.
- Extradition (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography) Amendment Regulations 2009 (No 1): The Regulations declare countries in which the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography²⁹

²⁴ The Extradition (Macedonia) Amendment Regulations 2009 (No 1), which commenced on 30 October 2009, remedied an administrative oversight in the Extradition (Macedonia) Regulations 2009. The Amendment Regulations changed the word 'Macedonia' to 'former Yugoslav Republic of Macedonia'.

²⁵ [1999] ATS 21.

²⁶ [2006] ATS 2.

²⁷ [1982] ATS 8.

²⁸ [1967] ATS 31.

²⁹ [2007] ATS 6.

is in force to be extradition countries. The Regulations commenced on 14 October 2009.

- Extradition (Safety of United Nations and Associated Personnel) Amendment Regulations 2009 (No 1): The Regulations declare countries in which the Convention on the Safety of United Nations and Associated Personnel³⁰ is in force to be extradition countries. The Regulations commenced on 14 October 2009.
- Extradition (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 2009: The Regulations declare countries in which the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances³¹ is in force to be extradition countries. The Regulations commenced on 14 October 2009.
- Extradition (Transnational Organised Crime) Amendment Regulations 2009 (No 1): The Regulations declare countries in which the United Nations Convention against Transnational Organized Crime,³² Protocol against the Smuggling of Migrants by Land, Sea and Air³³ and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children³⁴ are in force. The Regulations commenced on 14 October 2009.

18. Regulations made under the Fisheries Management Act 1991

Fisheries Management (International Agreements) Regulations 2009 (SLI 2009 No. 254)

The Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008 (the Amendment Act) amended the Fisheries Management Act 1991 to include a revised and strengthened legislative framework for the enforcement of fishing activities beyond the AFZ. These changes came into effect on 25 June 2009 and fall into three broad categories: Australian boats operating beyond the Australian Fishing Zone; Australian nationals on foreign boats operating beyond the Australian Fishing Zone; and foreign boats operating beyond the Australian Fishing Zone. The Amendment Act also included two new definitions:

- international fisheries management organisation (IFMO) means a global, regional, or subregional fisheries organisation or arrangement prescribed by regulations; and
- international fisheries management measure (IFMM) means a measure prescribed by the regulations to give effect to a measure established by an international fisheries management organisation.

³⁰ [2001] ATS 3.

³¹ [1993] ATS 4.

³² [2004] ATS 12.

³³ [2004] ATS 11.

³⁴ [2005] ATS 27.

The Fisheries Management (International Agreements) Regulations 2009 (the Regulations) prescribe IFMOs to which Australia is a party and the IFMMs adopted by them. The Regulations enable the Australian Fisheries Management Authority (AFMA), the statutory authority responsible for the efficient management and sustainable use of Commonwealth fisheries, to enforce compliance with these measures and arrangements by domestic and foreign vessels operating beyond the Australian Fishing Zone. Under the Regulations, the Australian Fisheries Management Authority will ensure that Australia complies with its obligations under International Law.

The IFMOs prescribed in the Regulations are the:

1. Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR);
2. Convention of the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC);
3. Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC); and
4. Convention for the Conservation of Southern Bluefin Tuna (CCSBT).

The IFMMs that are prescribed in the Regulations are enforceable components of the measures and arrangements adopted by the first three IFMOs and include measures for documenting catch, clearly marking vessels and fishing gear requirements. The IFMMs of CCSBT are to be prescribed after the Commission reviews the operation of its measures in October 2009.

These Regulations commenced on 10 October 2009.

Fisheries Management (Southern Bluefin Tuna Fishery) Amendment Regulations 2009 (No. 1) (SLI 2009 No. 318)

Australia is a Party to the Convention for the Conservation of Southern Bluefin Tuna.³⁵ The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is the international body which administers the Convention. The Australian Government manages its component of the global fishery through the Southern Bluefin Tuna Plan.

The purpose of these Regulations was to allow the next fishing season to span a period of two years, from 1 December 2009 to 30 November 2011 in accordance with the decision of the CCSBT. This change, together with the Determination of Australia's National Allocation under the SBT Plan being applied over the modified two year period, provides operators flexibility as to the timing of adjustment for their own businesses.

The Regulations commenced on 26 November 2009.

³⁵ 1994 [ATS] 16.

19. Intellectual Property Law Amendment Regulations 2009 (No. 1) (SLI 2009 No. 150)

The Regulations make various amendments to the Patents Regulations 1991 in line with Australia's obligations as Party to the Patent Cooperation Treaty (PCT)³⁶ as well as minor changes to the Patents Regulations 1991, the Trade Marks Regulations 1995 and Designs Regulations 2004 to improve the administration of various matters prescribed under the Patents Act, Trade Marks Act and the Designs Act and correct some minor typographical errors.

One purpose of the Regulations is to update the English text of the Regulations under the PCT (PCT Rules) set out in Schedule 2A to the Patents Regulations 1991 to reflect changes made to the PCT Rules by the International Patent Cooperation Union Assembly at a meeting held in September 2008. The changes to the PCT Rules are purely of an administrative nature. Firstly, the changes clarify the procedures for withdrawal of an international application under Article 14(4) of the Patent Cooperation Treaty (PCT). Secondly, the changes introduce a requirement for the applicant to submit replacement sheet(s) for every sheet of the international application that is amended by the applicant under Articles 19 or 34 of the PCT.

These Regulations commenced on 1 July 2009.

20. International Transfer of Prisoners (Vietnam) Regulations 2009 (SLI 2009 No. 282)

These Regulations give effect to the Agreement between Australia and the Socialist Republic of Vietnam concerning Transfer of Sentenced Prisoners.³⁷ The Regulations declare Vietnam to be a transfer country. This has the effect of allowing prisoners to be transferred from Australia to Vietnam or vice versa, in certain circumstances. For example, prisoners can be transferred from Vietnam to Australia where they have community ties with Australia.

The Regulations commenced on 11 December 2009.

21. Regulations made under the Migration Act 1958

Migration Amendment Regulations 2009 (No. 5) (SLI 2009 No. 115)

These Regulations make various amendments to the Migration Regulations 1994 including the introduction of a new Subclass 406 (Government Agreement) visa. This visa allows non-citizens to enter Australia in two circumstances: in accordance with the terms of an agreement between a government in Australia and the government of a foreign country, or to direct the national operations of prescribed organisations in Australia. An example of a Government Agreement visa issued in accordance with the first circumstance would be an agreement between an Australian Government Department and its counterpart in another country for the exchange of appropriately qualified scientists to undertake particular research.

The Regulations commenced on 14 September 2009.

³⁶ [1980] ATS 6.

³⁷ [2009] ATS 27.

Migration Amendment Regulations 2009 (No. 13) (SLI 2009 No. 289)

The purpose of the Regulations is to amend the Migration Regulations 1994 to make changes necessary to ensure the intended operation of immigration policy. 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).³⁸ The Migration Act 1958 and the Migration Regulations 1994, amongst other matters, implement Australia's obligations under the Refugees Convention.

In particular, the Regulations amend the Principal Regulations to clarify that an applicant for a protection visa can be either a person to whom Australia has protection obligations under the Refugees Convention, or a member of that person's family, provided that the person has been granted a protection visa.

The Principal Regulations are also amended to allow an unborn child, not listed as a member of a family when an application for a protection visa is lodged, to be entitled to be granted a protection visa as a member of the same family when the child is born.

The Regulations commenced on 9 November 2009.

22. Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2009 (No. 1) (SLI 2009 No. 338)

These Regulations are made under the Nuclear Non-Proliferation Act 1987, which gives effect to certain of Australia's obligations under international agreements relating to nuclear non-proliferation such as the Agreement with the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non Proliferation of Nuclear Weapons,³⁹ as well as various bilateral safeguards agreements.

The Act imposes a charge on producers of uranium ore concentrates under certain circumstances. The Regulations prescribe the amount of charge payable under the Act.

The Regulations commenced on 27 November 2009.

23. Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Regulations 2009 (SLI 2009 No. 101)

These Regulations implement Australia's obligations under the International Convention on Civil Liability for Bunker Oil Pollution Damage,⁴⁰ an Australian initiative within the International Maritime Organization. The Convention establishes a liability and compensation regime applicable in cases of pollution damage following the escape or discharge of bunker oil from a ship other than an oil tanker.

The Regulations give effect to Article 10 of the Convention, which requires that judgments from other Parties to the Convention which award compensation for

³⁸ [1954] ATS 5.

³⁹ [1974] ATS 16.

⁴⁰ [2009] ATS 14.

bunker oil pollution damage be recognised and enforced. The Regulations also set fees in relation to the issuance of insurance certificates to ships.

The Regulations commenced on 16 June 2009.

24. Protection of the Sea (Supplementary Fund) Regulations 2009 (SLI 2009 No. 244)

These Regulations give effect to Article 8 of the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992⁴¹ (2003 Protocol). The 2003 Protocol establishes the Supplementary Fund, which is part of a tiered system of compensation for oil pollution damage caused by ships. The Regulations sets out how contributions to and late penalties for the Supplementary Fund are to be paid.

The Regulations commenced on 13 October 2009.

25. Social Security (International Agreements) Act 1999 Amendment Regulations 2009 (No. 1) (SLI 2009 No. 58)

These Regulations amend the Social Security (International Agreements) Act 1999 to implement obligations under the Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile⁴² following the amendment of the Agreement in 2008. The Agreement coordinates age and disability support pensions and superannuation schemes of the two countries to improve welfare protection for persons moving between Australia and Chile. Consistent with Australia's general practice that social security treaties appear as Schedules to the Act, the text of the Agreement is included at Schedule 15.

The Schedule containing the Agreement commenced on 1 January 2009. The remaining provisions commenced on 14 April 2009.

⁴¹ This Protocol entered into force on 13 October 2009.

⁴² [2004] ATS 18.

