

Australian Legislation Concerning Matters of International Law 1994

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A. Commonwealth Statutes

1. Chemical Weapons (Prohibition) Act 1994 (No 26 of 1994)

This Act relates to the prohibition of the development, production, stockpiling or use of chemical weapons and the control of certain weapons capable of being used as chemical weapons. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction done at Paris, 13 January 1993 is attached to the Act in a Schedule.

2. Copyright (World Trade Organization Amendment) Act 1994 (No 149 of 1994)

The Act amends the Copyright Act 1968 to enable Australia to accept the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994. The Act enables Australia to comply with the obligations with regard to copyright under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It amends the Copyright Act 1968 to introduce a right for copyright owners in relation to rental of sound recordings and computer programs. It extends the period of protection for performers against unauthorised sound recordings of their performances and extends copyright-owner initiated customs seizure under section 135 of the Copyright Act to enable interception of unauthorised imports of all copyright materials.

3. Customs Legislation (World Trade Organization Amendments) Act 1994 (No 150 of 1994)

The Act amends the Customs Act 1901 and the Anti-Dumping Authority Act 1988 to bring Australia's anti-dumping and countervailing regimes into conformity with the standards and principles arising from the Uruguay Round agreements. The Act enables Australia to meet its obligations under agreements negotiated in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

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4. Customs Tariff (Anti-Dumping) (World Trade Organization Amendments) Act 1994 (No 151 of 1994)

This Act amends the Customs Tariff (Anti-Dumping) Act 1975 to enable Australia to accept the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994. This Act amends the Customs Tariff (Anti-Dumping) Act 1975 to bring Australia's anti-dumping and countervailing regimes into conformity with the standards and principles arising from the Uruguay Round agreements.

5. Customs Tariff (World Trade Organization Amendments) Act 1994 (No 152 of 1994)

This Act amends the Customs Tariff Act 1987 to enable Australia to accept the Agreement Establishing the World Trade Organization. The Act gives effect to Australia's tariff-binding commitments arising from the General Agreement on Tariffs and Trade (GATT) Uruguay Round outcomes. It reduces tariff rates for certain goods including cheese, tobacco, food stuffs, very low alcohol beer, diagnostic and laboratory reagents, certain replacement components of motor vehicles, power line filters and electro-medical equipment and apparatus.

6. Dairy Produce (World Trade Organization Amendments) Act 1994 (No 153 of 1994)

This Act amends the Dairy Produce Act 1986 to enable Australia to accept the Agreement Establishing the World Trade Organization. The Act does this by terminating the market support payments to the Australian Dairy Industry established under the Dairy Produce Act 1986. This assists Australia to meet its Uruguay Round commitments.

7. The Environment Protection (Sea Dumping) Amendment Act 1993 (No 16 of 1994)

This Act amends the Environment Protection (Sea Dumping) Act 1981 to implement provisions of the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping (the SPREP Protocol), done at Nouméa on 25 November 1986.

8. Foreign Evidence Act 1994 (No 59 of 1994)

This Act includes provisions to implement obligations under the Hague Convention Abolishing the Requirement of Legislation for Foreign Public Documents done at The Hague on 5 October 1961, so that Australia is in a position to accede to that Convention. It provides for certain evidentiary matters involving overseas jurisdictions.

9. Human Rights (Sexual Conduct) Act 1994 (No 179 of 1994)

This is an Act to implement Australia's international obligations under Article 17 of the International Covenant of Civil and Political Rights. The Act provides that sexual conduct involving only consenting adults acting in private is not to be subject, by or under any law of the Commonwealth, a State or a Territory, to any arbitrary interference with privacy within the meaning of Article 17 of that Covenant.

**10. International Air Services Commission Amendment Act 1994
(No 139 of 1994)**

This Act amends the International Air Services Commission Act 1992 and in particular, repeals and substitutes sections 16 and 20 of that Act relating to determinations by the Commission. It enables the Commission to make determinations with respect to a wider range of international air service routes. For this purpose it inserts a definition of "country" into the Act which covers parts of countries as well as whole countries. Determinations made by the Commission stipulate which Australian carriers may fly on particular international routes for the purposes of the relevant bilateral air service arrangements.

11. Maritime Legislation Amendment Act 1994 (No 20 of 1994)

This Act amends the law relating to Australia's maritime zones for the purpose of bringing those maritime zones into line with those to which Australia is entitled under the United Nations Convention on the Law of the Sea. Parts II, V and VI of the Convention are set out in the Schedule to the Act. The legislation makes changes in four areas: the exclusive economic zone, the continental shelf, the contiguous zone and the international legal basis for drawing the territorial sea baseline. In relation to the territorial sea baseline, the legislation replaces the baseline based on the 1958 Territorial Sea Convention definition with the 1982 Convention definition. The legislation also creates an exclusive economic zone (EEZ), the outer limits of which are 200 nautical miles from the territorial sea baseline. The legislation also re-defines the outer boundary of the continental shelf by adopting the 1982 Convention definition of the shelf.

**12. Patents (World Trade Organization Amendments) Act 1994
(No 154 of 1994)**

This Act amends the law in Australia with respect to Patents to enable Australia to accept the Agreement Establishing the World Trade Organization. The Act amends the Patent Act 1990 to increase the term of standard patents from 16 years to 20 years. It also places the onus on the defendant to prove that there has been no infringement in proceedings relating to patented processes and extends the conditions under which compulsory licences to work a patent are granted by a court.

13. Plant Breeder's Rights Act 1994 (No 110 of 1994)

This Act provides for the granting of proprietary rights to breeders of certain new varieties of plants and fungi, and for other purposes. The International Covenant for the Protection of New Varieties of Plants is attached to the Act in a Schedule.

**14. Sales Tax (World Trade Organization Amendments) Act 1994
(No 155 of 1994)**

This Act amends the Sales Tax (Exemptions and Classifications) Act 1992 to enable Australia to accept the Agreement Establishing the World Trade Organization. The Act extends the concessional rate of sales tax presently

applying to certain Australian, New Zealand and Papua New Guinean fruit and vegetable juice products to similar goods made from fruit and vegetables grown in other countries.

15. Social Security Legislation Amendment Act 1994 (No 63 of 1994)

This Act amends the Social Security Act 1991. Schedule 3 to the Act reproduces the agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993.

16. Social Security (New Zealand Agreement) Amendment Act 1994 (No 157 of 1994)

This Act amends the Social Security Act 1991 in relation to the signing of the new Social Security Agreement with New Zealand, called Agreement Between the Government of Australia and the Government of New Zealand on Social Security done at Wellington on 19 July 1994. The new Agreement is substituted for Schedule 4 of the Act.

17. Transport and Communications Legislation Amendment Act (No 2) 1993 (No 5 of 1994)

This Act schedules the Protocol relating to an amendment to the Convention on International Civil Aviation, done at Montreal on 6 October 1980. That Protocol inserted after Article 83, a new Article 83 *bis* relating to the transfer of certain functions and duties by the State of registry of an aircraft in circumstances involving the operation of an aircraft pursuant to an agreement for the lease, charter or interchange of the aircraft.

18. Transport and Communications Legislation Amendment Act 1994 (No 64 of 1994)

This Act amends the law relating to transport and communications. It implements provisions of the 1982 United Nations Convention on the Law of the Sea, in particular, with regard to the detention of foreign ships in connection with pollution offences.

B. Commonwealth Regulations

1. Regulations made under the Antarctic Marine Living Resources Conservation Act 1981

Antarctic Marine Living Resources Conservation Regulations (SR 1994 No 345).

These Regulations provide for, *inter alia*, a permit system to regulate entry into, and activities at sites designated under the CCAMLR Ecosystem Monitoring Program (CEMP), and for penalties for an unauthorised entry into and/or activity a CEMP site.

2. Regulations made under the Antarctic Treaty (Environment Protection) Act 1980

Antarctic Treaty (Environment Protection) (Waste Management) Regulations (SR 1994 No 36).

These Regulations primarily implement the obligations arising from Annex III to the Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol). The Regulations set out certain measures designed to manage waste generated on a day-to-day basis on the stations.

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

Charter of the United Nations (Sanctions) Regulations (Amendments) (SR 1994 No 157).

These Regulations amend the Charter of the United Nations (Sanctions) Regulations which implement economic sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro) to provide a direct reference in the title to the subject of the sanctions.

Charter of the United Nations (Sanctions—Angola) Regulations (SR 1994 No 156).

These Regulations prohibit the supply of certain goods within Angola other than through certain named entry points provided to the Secretary-General of the United Nations by the Government of Angola.

Charter of the United Nations (Sanctions—Haiti) Regulations (SR 1994 No 158).

These Regulations impose sanctions against Haiti including, *inter alia*, a freeze on the funds of the Government of Haiti and a ban on the import and export of Haitian goods and goods destined for Haiti without permission.

Charter of the United Nations (Sanctions—Haiti) Regulations (Repeal) (SR 1994 No 449).

These Regulations repeal Regulations (SR 1994 No 158) which imposed sanctions upon Haiti.

Charter of the United Nations (Sanctions—Libya) Regulations (SR 1994 No 131).

These Regulations impose a number of sanctions upon Libya including: financial sanctions; a prohibition on the provision of certain services to Libya relating to civil and military aviation; a prohibition on the provision of certain goods to Libya by Australian citizens outside Australia; and, measures to ensure that no claims can be brought by the Government or public authorities or nationals of Libya in connection with any transaction whose performance is affected by the implementation of the Security Council resolution imposing sanctions upon Libya.

Charter of the United Nations (Sanctions—Republic of Bosnia and Herzegovina) Regulations (SR 1994 No 448).

These Regulations impose economic sanctions, financial sanctions, and a prohibition on the provision of services against certain entities within, or with links to, areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.

Charter of the United Nations (Sanctions—Rwanda) Regulations (SR 1994 No 310).

These Regulations place a prohibition on Australians supplying certain goods to Rwanda other than for certain United Nations purposes.

4. Regulations made under the Civil Aviation Act 1988

Civil Aviation Regulations (Amendment) (SR 1994 No 93).

The bulk of these Regulations do not concern matters relating to international law. However, the Regulations do have the effect, *inter alia*, of requiring the carriage, or consignment for carriage, of dangerous goods on an aircraft to be in accordance with the Technical Instructions approved and published by decision of the Council of the International Civil Aviation Organisation, as in force from time to time. The Regulations also enable the Civil Aviation Authority to act along the lines set out in International Atomic Energy Agency Regulations in giving certain approvals relating to radioactive material for the purposes of the Technical Instructions.

5. Regulations made under the Copyright Act 1968

Copyright (International Protection) Regulations (Amendment) (SR 1994 No 114).

These Regulations have the effect of providing protection to the performances of citizens, nationals, and residents of the United States of America in so far as the performances are incorporated in a sound recording, or in relation to the sound broadcast or transmission to subscribers of a diffusion service of their live performances. The protection applies in circumstances consistent with the circumstances in which protection applies in the case of citizens, nationals and residents of member countries of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcast Organisations (the Rome Convention). Performances by Australian citizens and residents given in the USA or recorded or broadcast by US nationals are also protected. The Regulations also add to, and make omissions from, the list of countries in Parts I, II, and IV of Schedule I of the Regulations.

6. Regulations made under the Customs Act 1901

Customs (Prohibited Exports) Regulations (Amendment) (SR 1994 No 143).

These Regulations replace the existing Schedule 9 with a new Schedule which reflects the new harmonised trigger lists as agreed to by Australia. Schedule 9 lists primarily goods which have been identified by the "Zangger" Committee (a Committee essentially of signatories to the Nuclear Non-Proliferation treaty) as goods which incorporate nuclear-specific materials and technologies whose exportation should trigger safeguards. Schedule 9 is the vehicle by which

Australia gives effect to all its international commitments to export control of nuclear-specific items.

Customs (Prohibited Exports) Regulations (Amendment) (SR 1994 No 172).

These Regulations relate to the prohibition of the exportation without permission of goods to Libya, Haiti, and Angola.

Customs (Prohibited Exports) Regulations (Amendment) (SR 1994 No 242).

These Regulations implement the lifting of the arms embargo against South Africa by the United Nations Security Council.

Customs (Prohibited Exports) Regulations (Amendment) (SR 1994 No 313).

These Regulations prohibit the exportation without permission of certain goods to Rwanda.

Customs (Prohibited Exports) Regulations (Amendment) (SR 1994 No 379).

These Regulations implement Australia's obligations as a member of the United Nations to lift the sanctions against exportation from Australia to Haiti.

Customs (Prohibited Imports) Regulations (Amendment) (SR 1994 No 171).

These Regulations prohibit the importation without permission of goods originating in Haiti.

Customs (Prohibited Imports) Regulations (Amendment) (SR 1994 No 241).

These Regulations lift the arms embargo against South Africa.

Customs (Prohibited Imports) Regulations (Amendment) (SR 1994 No 378).

These Regulations give effect to Australia's obligations as a member of the United Nations by lifting the sanctions against importation to Australia from Haiti.

7. Regulations made under the Defence (Visiting Forces) Act 1963

Defence (Visiting Forces) Regulations (Amendment) (SR 1994 No 407).

These Regulations apply the Act to the following countries: Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Republic of the Philippines, and the Kingdom of Thailand and move Fiji from the Commonwealth countries regulations to the non-Commonwealth countries regulations, referring to it as the "Republic of Fiji".

8. Regulations made under the Extradition Act 1988

Extradition (Republic of Indonesia) Regulations (SR 1994 No 441).

The Regulations enable Australia to give domestic effect to the Extradition Treaty between Australia and the Republic of Indonesia which was signed in Jakarta on 22 April 1992. The Regulations apply the Act to the Republic of Indonesia subject to the treaty, the English language text of which is reproduced as a Schedule to the Regulations.

9. Regulations made under the Family Law Act 1975

Family Law (Child Abduction Convention) Regulations (Amendment) (SR 1994 No 252).

These Regulations extend the list of countries in Schedule II of the Regulations by specifying the Federal Republic of Yugoslavia (Serbia and Montenegro) as an additional Convention country in respect of which the Convention has entered into force for Australia. The Regulations also ensure that inclusion in no way implies recognition by Australia of that entity.

Family Law (Child Abduction Convention) Regulations (Amendment) (SR 1994 No 275).

These Regulations extend the list of countries in Schedule II by specifying the Bahamas, the US and Panama as additional Convention countries in respect of which the Convention has entered into force for Australia. The date on which the Convention came into force for each of these countries is included in Schedule II.

Family Law (Child Abduction Convention) Regulations (Amendment) (SR 1994 No 344).

These Regulations extend the list of countries in Schedule II of the Regulations to Finland, Chile and Slovenia as additional Convention countries in respect of which the Convention has entered into force for Australia. The Regulations also make an amendment to reflect the fact that Panama has withdrawn the reservation it made at the time of accession to the Convention.

10. Regulations made under the Foreign Evidence Act 1994

Foreign Evidence (Foreign Material—Criminal and Related Civil Proceedings) Regulations (SR 1994 No 333).

These Regulations apply Part 3 of the Act to specified States and Territories. Part 3 of the Act implements new procedures for enabling foreign material authenticated in a prescribed manner to be admissible in evidence in criminal proceedings and in related civil proceedings, subject to appropriate safeguards. The purpose of the Regulations is to provide national uniformity and to assist State and Territory proceedings involving foreign evidence.

11. Regulations made under the Foreign Judgments Act 1991

Foreign Judgments Regulations (Amendment) (SR 1994 No 283).

These Regulations give effect to the Agreement between the Government of Australia and the Government of the United Kingdom of 23 August 1992, which provides for, amongst other things, the enforcement in Australia of money judgments of certain United Kingdom inferior courts. The Regulations extend Part II of the Act to each County Court in England and Wales, each County Court in Northern Ireland and each Sheriff Court in Scotland.

12. Regulations made under the Migration Act 1958

Migration Regulations (Amendment) (SR 1994 No 280).

These Regulations, *inter alia*, facilitate the entry into Australia of staff of organisations who have entered into Regional Headquarters Agreements with the Commonwealth Government to establish a regional headquarters in Australia.

Migration (Haiti—United Nations Security Council Resolutions) Regulations (SR 1994 No 151).

These Regulations proscribe the granting of a visa or entry permit to certain persons who were connected with the Haitian coup d'état of 1991, the Haitian police and military forces, the present administration of Haiti, and their immediate families. The Regulations also prevent the granting of visas and entry permits to persons engaging in business activities with Haiti with certain exceptions.

Migration (Haiti—United Nations Security Council Resolutions) Regulations (SR 1994 No 267).

These Regulations repeal the Migration (Haiti—United Nations Security Council Resolutions) Regulations (SR 1994 No 151) and remake those Regulations.

Migration (Haiti—United Nations Security Council Resolutions) Regulations (Repeal) (SR 1994 No 402).

These Regulations repeal the Migration (Haiti—United Nations Security Council Resolutions) Regulations (SR 1994 No 267).

Migration (Iraq—United Nations Security Council Resolutions) Regulations (SR 1994 No 265).

These Regulations repeal the Migration (Iraq—United Nations Security Council Resolutions) Regulations (SR 1991 No 222) and remake those Regulations. The Regulations limit the circumstances in which the Minister may grant a visa to persons engaged in business activities with Iraq, and also provide for cancellation of the visa of a person engaged in prohibited activities.

Migration (Republic of Bosnia and Herzegovina—United Nations Security Council Resolutions) Regulations (SR 1994 No 403).

These Regulations limit the circumstances in which the Minister may grant a visa of any class to persons connected with the Bosnian Serb forces in certain areas in relation to which sanctions were imposed by the United Nations Security Council Resolution No 942 of 23 September 1994, and to persons engaging in certain economic activities with persons and entities in the same areas. The Regulations also make provision for the cancellation of visas held by non-Australian citizens who engage in the prescribed economic activities within Australia.

Migration (Yugoslavia (Serbia and Montenegro)—United Nations Security Council Resolutions) Regulations (SR 1994 No 266).

These Regulations repeal the Migration (Yugoslavia (Serbia and Montenegro)—United Nations Security Council Resolutions) Regulations (SR 1992 No 157) and remake those Regulations. The purpose of the Regulations is to limit the circumstances in which the Minister may grant a visa to persons engaged in business activities, scientific and technical co-operation, cultural exchanges and visits with Yugoslavia. They also provide for cancellation of the visa of a person engaged in prohibited activities. The making of these Regulations is consistent with the objectives of implementing the UN Security Council Resolution No 757 of 30 May 1992.

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

Mutual Assistance in Criminal Matters (Finland) Regulations (SR 1994 No 84).

These Regulations apply the Act to Finland subject to the Mutual Assistance in Criminal Matters Treaty signed between Australia and Finland on 22 June 1992. The Regulations enable Australia to give domestic effect to the Treaty, a copy of the English text of which is set out in the Schedule.

Mutual Assistance in Criminal Matters (French Republic) Regulations (SR 1994 No 33).

These Regulations will enable Australia to give domestic effect to the Mutual Assistance in Criminal Matters Treaty signed between Australia and the French Republic on 14 January 1993. The Regulations apply the Act to the French Republic subject to the Treaty, a copy of the English language text of which is set out in the Schedule. The Regulations also repeal the Mutual Assistance in Criminal Matters (France) Regulations (SR 1991 No 400).

Mutual Assistance in Criminal Matters (Grand Duchy of Luxembourg) Regulations (SR 1994 No 99).

These Regulations will enable Australia to give effect to the Mutual Assistance in Criminal Matters Treaty signed between Australia and the Grand Duchy of Luxembourg on 24 October 1988. The Regulations do this by applying the Act to Luxembourg subject to the Treaty, a copy of the English language text of which is set out in the Schedule.

Mutual Assistance in Criminal Matters (Service of Documents) Regulations (SR 1994 No 334).

These Regulations apply the Act to all countries specified in the Schedule for the purpose of enabling the service of documents on behalf of a requesting foreign country. The Regulations thus enable Australia to serve documents on behalf of foreign countries with which there is no specific mutual assistance relationship. The Regulations also provide that the inclusion of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the Schedule in no way implies Australia's recognition of that entity.

Mutual Assistance in Criminal Matters (Switzerland) Regulations (SR 1994 No 7).

These Regulations apply the Act to Switzerland subject to the Treaty, a copy of the English language text of which is set out in the Schedule. The Regulations

will enable Australia to give domestic effect to the Mutual Assistance in Criminal Matters Treaty signed between Australia and Switzerland on 25 November 1991. The Regulations also repeal Regulations made in 1988 that apply the Act to Switzerland on a non-treaty basis.

Mutual Assistance in Criminal Matters (United States of America) Regulations (Amendment) (SR 1994 No 442).

These Regulations effectively apply Parts III, V and VI of the Act to the United States and have the effect of applying the whole Act, other than Part VIA to the United States of America.

14. Regulations made under the Ozone Protection Act 1989

Ozone Protection (HCFC, KBFC and Methyl Bromide) Regulations (Amendment) (SR 1994 No 136).

The objective of the Regulations is to change the commencement date of the Ozone Protection (HCFC, KBFC and Methyl Bromide) Regulations because there has been a delay in ratifying the amendment to the Montreal Protocol, and hence a delay in the amendment (to the Montreal Protocol) entering into force for Australia.

Ozone Protection (Product Control) Regulations (Amendment) (SR 1994 No 155).

These Regulations amend the principal Regulations to include controls on the import and manufacture of domestic refrigeration containing chloro-fluorocarbons (CFCs) in refrigerant or insulating foam. The Regulations also apply sub-Regulations 7(1) and 7(2) to domestic, as well as commercial and industrial refrigeration equipment, and to refrigeration equipment that is insulated with foam manufactured with CFCs.

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

Protection of the Sea (Oil Pollution Compensation Fund) Regulations (SR 1994 No 126).

These Regulations will enable Australia to accede to the International Fund for Compensation for Oil Pollution Damage 1971 (the 1971 Fund Convention). These Regulations provide for the vesting of jurisdiction in relation to claims for compensation or indemnification under the 1971 Fund Convention, in the State and internal Territory Supreme Courts, and the Federal Court of Australia. They also provide for the registration by an Australian court of foreign judgments against the International Oil Pollution Fund (IOPC Fund) established under the Convention for compensating victims of oil pollution damage. The IOPC Fund is created by applying an annual levy on any person who receives, after carriage by ship, more than 150,000 tonnes of "contributing oil" in a calendar year. The Regulations also prescribe procedures for the maintenance and retention of records of contributing oil, the provision of details of contributing oil, and the payment of contributions to the IOPC Fund.

16. Regulations made under the World Heritage Properties Conservation Act 1983

World Heritage Properties Conservation Regulations (Amendment) (SR 1994 No 388).

These Regulations will prohibit the destruction or damage of native vegetation, specific construction and excavation works, and the discharge of materials into the ocean which are likely to affect adversely the adjacent seagrass beds in Hinchinbrook Channel. The Regulations also require that any person wishing to undertake certain works in the area protected under Schedule 2D of the Regulations, must first obtain written permission from the Minister.

Australian Practice in International Law 1994

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