



# **Foreign Affairs and Trade Legislation Amendment Act 1997**

**No. 150, 1997**





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**An Act to amend various Acts relating to matters  
dealt with by the Department of Foreign Affairs  
and Trade, and for other purposes**



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**An Act to amend various Acts relating to matters  
dealt with by the Department of Foreign Affairs  
and Trade, and for other purposes**

The Parliament of Australia enacts:

[Assented to 17 October 1997]

## **1 Short title**

This Act may be cited as the *Foreign Affairs and Trade Legislation  
Amendment Act 1997*.

## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) If the day on which the first supplementary IAEA agreement is signed on behalf of Australia is a later day than the day on which this Act receives the Royal Assent, the amendments of the *Nuclear Non-Proliferation (Safeguards) Act 1987* made by this Act commence on that later day.
- (3) The amendment of section 10 of the *Passports Act 1938* made by this Act commences on the 28th day after the day on which this Act receives the Royal Assent.
- (4) In this section:

*Agency Agreement* has the same meaning as in the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

*IAEA agreement* means an agreement between Australia and the International Atomic Energy Agency, but does not include:

- (a) the Agency Agreement; or
- (b) an agreement that amends the text of the Agency Agreement.

*supplementary IAEA agreement* means an IAEA agreement that is additional to the Agency Agreement.

### 3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Amendments of Acts relating to matters dealt with by the Department of Foreign Affairs and Trade**

### ***Chemical Weapons (Prohibition) Act 1994***

#### **1 After section 101**

Insert:

#### **101A Privileges and immunities of observers**

An observer is to have such privileges and immunities as are prescribed for the purposes of this section.

### ***Consular Fees Act 1955***

#### **2 Title**

After “**Officers**” (second occurring), insert “**and Employees**”.

#### **3 Paragraph 3(b)**

Omit “of Foreign Affairs”.

#### **4 Paragraph 3(b)**

Omit “that”, substitute “the”.

#### **5 At the end of section 3**

Add:

- ; or (c) an employee of the Commonwealth authorised, in writing, by the Secretary to the Department; or
- (d) an employee of the Australian Trade Commission authorised, in writing, by the Secretary to the Department.

### ***Consular Privileges and Immunities Act 1972***

#### **6 Paragraph 5(2)(f)**

Omit “*Organizations*”, substitute “*Organisations*”.

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***International Organizations (Privileges and Immunities) Act  
1963***

**7 At the end of section 5**

Add:

- (2) In determining whether a designated organisation is covered by paragraph (1)(b), a person is taken to represent a particular country if, and only if:
- (a) the person has been nominated by an officer of the government of that country to be a member of that organisation; and
  - (b) the person is subject to direction by an officer of the government of that country as to how the person's rights in relation to the person's membership of the organisation are to be exercised (whether or not any such directions have been given).
- (3) For the purposes of subsection (2), an organisation is a ***designated organisation*** unless:
- (a) the organisation is established by an agreement to which Australia and one or more other countries are parties; and
  - (b) the advancement of the interests of Australia and that other country or those other countries is, under the agreement, a function (whether express or implied) of the organisation.
- (4) Subsections (2) and (3) are to be disregarded in determining the validity of regulations made before the commencement of this subsection.
- (5) The regulations may provide that this Act (other than subsection (6)) has effect as if a specified organ of an international organisation to which this Act applies were, in the organ's own right, an international organisation to which this Act applies.
- Note: As a result of this subsection, the organ will not be treated as part of the first-mentioned organisation.
- (6) If:
- (a) an organ of an international organisation to which this Act applies (the ***parent organisation***):
    - (i) ceases to be an organ of the parent organisation; and

- (ii) becomes a new organisation in its own right; and
  - (b) the new organisation is covered by paragraph (1)(a) or (b);  
and
  - (c) the new organisation is not the subject of a declaration under  
subsection (1); and
  - (d) the parent organisation is not declared by the regulations to  
be exempt from this subsection;
- the new organisation is taken, by force of this subsection, to be an  
international organisation to which this Act applies throughout the  
period:
- (e) beginning when it became a new organisation in its own  
right; and
  - (f) ending at whichever is the earlier of the following:
    - (i) the end of 12 months after the time when it became a  
new organisation in its own right;
    - (ii) the time when it became the subject of a declaration  
under subsection (1).

## **8 At the end of section 7**

Add:

- (4) If:
  - (a) regulations are made for the purposes of subsection (1) after  
the commencement of this subsection; and
  - (b) those regulations are in force immediately before the end of  
the period of 12 months after they came into effect;those regulations cease to be in force at the end of that 12-month  
period.
- (5) If:
  - (a) regulations were made for the purposes of subsection (1)  
before the commencement of this subsection; and
  - (b) those regulations are in force immediately before the end of  
the period of 12 months after the commencement of this  
subsection;those regulations cease to be in force at the end of that 12-month  
period.

## **9 After section 9A**

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Insert:

**9B Privileges and immunities of members of other international tribunals**

- (1) The regulations may confer upon:
- (a) a specified international tribunal; and
  - (b) the members and officials of a specified international tribunal; and
  - (c) experts and other persons engaged on missions by order of a specified international tribunal; and
  - (d) the agents, advocates and counsel of parties in cases before a specified international tribunal; and
  - (e) witnesses in cases before a specified international tribunal;
- such privileges and immunities as are required to give effect to:
- (f) if the instrument by which the international tribunal is established relates to the privileges and immunities at the international tribunal—that instrument; or
  - (g) if an agreement to which Australia and one or more other countries are parties relates to the privileges and immunities of the international tribunal—that agreement.
- (2) This section and section 6 do not limit each other.
- (3) In this section:

*international tribunal* means an international tribunal (however described) that:

- (a) has a judicial or quasi-judicial character; and
- (b) is established by or under an agreement to which Australia and one or more other countries are parties;

but does not include the International Court of Justice established by the Charter of the United Nations.

**10 After section 11**

Insert:

### **11A Exemption from sales tax**

- (1) The regulations may provide that sales tax is not payable in respect of goods if:
  - (a) the goods are for the official use of an international organisation to which this Act applies; and
  - (b) the organisation has its headquarters in Australia.
- (2) Regulations made for the purposes of subsection (1) may be of general application or may relate to particular international organisations to which this Act applies.
- (3) Regulations made for the purposes of subsection (1) may provide for an exemption from sales tax, either:
  - (a) unconditionally; or
  - (b) subject to any limitations or conditions specified in the regulations.
- (4) The regulations may deal with the waiver of an exemption provided for by regulations made for the purposes of subsection (1).
- (5) This section and section 6 do not limit each other.

### **11 After section 12**

Insert:

### **12A Conferral of juridical personality and legal capacities**

- (1) This section applies to an organisation if:
  - (a) either:
    - (i) the organisation is established by an instrument to which 2 or more countries are parties; or
    - (ii) an instrument to which Australia and one or more other countries are parties recognises the organisation as having international legal personality; and
  - (b) it appears to the Minister that the provisions of this Act other than this section do not, or may not, apply in relation to the organisation, but that it is desirable that juridical personality and one or more legal capacities should be conferred on the organisation.

- (2) The regulations may confer upon a specified organisation juridical personality and such legal capacities as are necessary for the exercise of the powers, and the performance of the functions, of the organisation.

## **12 At the end of section 13**

Add:

- (2) Regulations under this Act may be expressed to take effect from a day specified in a written determination made by the Minister under this subsection for the purposes of the commencement of those regulations. If the purpose or object underlying those regulations is to implement an international instrument (whether or not that purpose is expressly stated in those regulations), the day must not be earlier than the day on which the instrument becomes effective for Australia.
- (3) Subsection (2) has effect despite anything in paragraph 48(1)(b) of the *Acts Interpretation Act 1901* or subsection 9(1) of the *Legislative Instruments Act 1997*.
- (4) If a determination under subsection (2) is made after the commencement of the *Legislative Instruments Act 1997*, the determination is a legislative instrument for the purposes of that Act.

## **13 General amendments—spelling of “organisation”**

The following provisions of the *International Organizations (Privileges and Immunities) Act 1963* are amended by omitting “organization” (wherever occurring), “*Organization*” (wherever occurring), “organizations” (wherever occurring), “**Organizations**” (wherever occurring) and “*Organizations*” (wherever occurring) and substituting “organisation”, “*Organisation*”, “organisations”, “**Organisations**” and “*Organisations*” respectively:

- (a) title;
- (b) section 1;
- (c) section 3;
- (d) section 5;
- (e) section 5A;
- (f) section 6;

- (g) section 7;
- (h) section 9A;
- (i) section 10;
- (j) section 12;
- (k) the First Schedule;
- (l) the Second Schedule;
- (m) the Third Schedule;
- (n) the Fourth Schedule;
- (o) the Fifth Schedule.

Note: The headings to sections 5, 5A, 6 and 12 of the *International Organization (Privileges and Immunities) Act 1963* are altered by omitting “**organizations**” and substituting “**organisations**”.

#### **14 Transitional—organisations with headquarters in Australia—repayment of amounts relating to sales tax**

- (1) If:
- (a) any regulations are made for the purposes of section 11A of the *International Organisations (Privileges and Immunities) Act 1963* within 90 days after the commencement of this item; and
  - (b) those regulations apply to an international organisation; and
  - (c) the organisation had its headquarters in Australia as at 1 January 1997; and
  - (d) at a time before those regulations came into effect, goods were sold to the organisation for its official use; and
  - (e) the seller has paid sales tax to the Commonwealth in respect of the sale; and
  - (f) at the time of the sale, there was no sales tax ruling that:
    - (i) applied to the sale; and
    - (ii) contained an express reference to the organisation; and
  - (g) within 90 days after those regulations took effect, the organisation gives the Commissioner of Taxation a written claim for the payment of an amount equal to the sales tax paid by the seller; and
  - (h) the organisation gives the Commissioner of Taxation such information about the claim as the Commissioner of Taxation requires;

the Commissioner of Taxation must, on behalf of the Commonwealth, pay to the organisation an amount equal to the sales tax paid by the seller.

- (2) Paragraph (1)(d) applies to a sale even if the sale occurred before the commencement of this item.
- (3) This item does not prevent 2 or more claims from being set out in the same document.
- (4) The Consolidated Revenue Fund is appropriated for the purposes of subitem (1).

### ***Nuclear Non-Proliferation (Safeguards) Act 1987***

#### **15 Subsection 3(1)**

After “Agency Agreement”, insert “, the Supplementary Agency Agreements”.

#### **16 Subsection 4(1) (definition of *Agency Agreement*)**

Omit all the words after “Schedule 3,”, substitute:

and:

- (a) subject to subsection (3), includes that Agreement as amended from time to time; and
- (b) subject to section 4A, includes that Agreement as modified from time to time by the Supplementary Agency Agreements.

#### **17 Subsection 4(1)**

Insert:

*amendment*, in relation to a document, means an amendment of the text of the document.

#### **18 Subsection 4(1)**

Insert:

*Supplementary Agency Agreement* has the meaning given by section 4A.

#### **19 At the end of section 4**

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Add:

- (10) A reference in this Act to an inspection by an Agency inspector includes a reference to access by the inspector.

## **20 After section 4**

Insert:

### **4A Supplementary Agency Agreements**

- (1) For the purposes of this Act, *Supplementary Agency Agreement* means an IAEA agreement that is additional to the Agency Agreement, and includes such an IAEA agreement as amended from time to time.
- (2) An IAEA agreement, or an amendment of an IAEA agreement, does not have effect for the purposes of this Act unless the agreement or amendment, as the case may be, is declared by the regulations to have effect for the purposes of this Act.
- (3) An IAEA agreement, or an amendment of an IAEA agreement, takes effect for the purposes of this Act from:
- (a) the day on which the regulations referred to in subsection (2) take effect; or
  - (b) such later day as is specified in those regulations.
- (4) In this section:

*IAEA agreement* means an agreement between Australia and the International Atomic Energy Agency, but does not include:

- (a) the Agency Agreement; or
- (b) an agreement that amends the Agency Agreement.

## **21 Paragraph 8(3)(a)**

After “Agency Agreement”, insert “, a Supplementary Agency Agreement”.

## **22 At the end of subsection 13(6)**

Add “or a Supplementary Agency Agreement”.

## **23 Paragraph 43(b)**

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After “Agency Agreement”, insert “, the Supplementary Agency Agreements”.

**24 Subsection 57(2)**

After “Agency Agreement”, insert “or a Supplementary Agency Agreement”.

**25 Paragraph 59(1)(e)**

Omit “Articles 71 to 90 (inclusive) of the Agency Agreement”, substitute “the Agency Agreement or a Supplementary Agency Agreement”.

**26 Paragraph 60(1)(h)**

Omit “Articles 71 to 90 (inclusive) of the Agency Agreement”, substitute “the Agency Agreement or a Supplementary Agency Agreement”.

**27 Subsection 60(2)**

Omit “Articles 71 to 90 (inclusive) of the Agency Agreement”, substitute “the Agency Agreement or a Supplementary Agency Agreement”.

**28 Paragraph 60(3)(b)**

Omit “Articles 71 to 90 (inclusive) of the Agency Agreement”, substitute “the Agency Agreement or a Supplementary Agency Agreement”.

**29 Subsection 70(4)**

After “Agency Agreement”, insert “, the Supplementary Agency Agreements”.

***Passports Act 1938***

**30 Subsection 10(1)**

After “knowingly”, insert “or recklessly”.

## **Schedule 2—Amendments of Acts relating to matters dealt with by other Departments**

### *Administrative Decisions (Judicial Review) Act 1977*

#### **1 Paragraph (c) of Schedule 2**

Omit “*Organizations*”, substitute “*Organisations*”.

### *Fringe Benefits Tax Assessment Act 1986*

#### **2 Paragraph 55(a)**

Omit “*Organizations*”, substitute “*Organisations*”.

### *Income Tax Assessment Act 1936*

#### **3 Paragraph 23AG(2)(e)**

Omit “*Organizations*”, substitute “*Organisations*”.

#### **4 Subparagraph 97(3)(c)(ii)**

Omit “*Organizations*”, substitute “*Organisations*”.

#### **5 Section 102M (paragraph (ba) of the definition of *exempt entity*)**

Omit “*Organizations*”, substitute “*Organisations*”.

#### **6 Subsection 121F(1) (paragraph (cb) of the definition of *relevant exempting provision*)**

Omit “*Organizations*”, substitute “*Organisations*”.

#### **7 Subsection 160K(1) (paragraph (bc) of the definition of *relevant exempting provision*)**

Omit “*Organizations*”, substitute “*Organisations*”.

### *Migration Act 1958*

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**8 Paragraph 280(6)(c)**

Omit “organization”, substitute “organisation”.

**9 Subsection 280(7) (definition of *member of an office of an international organization*)**

Repeal the definition, substitute:

*member of an office of an international organisation* means the holder of an office in, an employee of, or a voluntary worker for, a body that, under section 3 of the *International Organisations (Privileges and Immunities) Act 1963*, is an international organisation within the meaning of that Act.

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[*Minister's second reading speech made in—  
House of Representatives on 25 June 1997  
Senate on 1 October 1997*]

(104/97)