

Circuit Layouts Regulations (Amendment) 1995 No. 404

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 404

Issued by the Authority of the Minister for Justice

Circuit Layouts Act 1989

Circuit Layouts Regulations (Amendment)

Section 48 of the Circuit Layouts Act 1989 (the Act) provides that the GovernorGeneral may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by the Act to be prescribed for carrying out or giving effect to it.

Section 5 of the Act provides that 'eligible foreign country' means a foreign country declared by the regulations to be an eligible foreign country for the purposes of this Act.

Section 42 of the Act provides that a foreign country shall not be declared to be an eligible foreign country unless it is a party to a convention relating to the protection of circuit layouts and Australia is also a party to that convention; or certain other conditions are met.

Regulation 3 of the Circuit Layouts Regulations (the Regulations) provides that a foreign country specified in the Schedule to the Regulations is declared to be an eligible foreign country for the purposes of the Act. The Circuit Layouts Regulations (Amendment) amends the Regulations to replace the previous Schedule with the new Schedule which includes the names of all the foreign countries that are members of the World Trade Organization (WTO). The previous Schedule did not include the names of all the member countries of the WTO. However, as the countries listed in the previous Schedule are members of the WTO their names are, therefore, included in the new Schedule.

The effect of the amendment is to extend the rights available to Australian citizens, protected persons or residents in relation to original circuit layouts, to citizens, nationals and residents of the WTO member countries not already listed in the existing Schedule. In practical terms, this means that where an original circuit layout is made by a citizen, resident or national of a WTO member country (or is first commercially exploited in such a country), that layout is protected in Australia as if it had been made by an Australian citizen. Citizens, residents and nationals of WTO member countries therefore enjoy the same rights in Australia under the Circuit Layouts Act, as Australian citizens, protected persons or residents.

By way of background, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) relates to the protection of circuit layouts. In that regard, Articles 35 to 38 of TRIPS impose obligations in relation to the protection of integrated circuits. TRIPS forms part of the Agreement Establishing the World Trade Organisation (the WTO Agreement). By virtue of Article H of the WTO Agreement, TRIPS is binding on all members of the WTO. Australia is an original member of the WTO in accordance with Article M of the WTO Agreement. Members of the WTO are obliged to accord the treatment provided for in TRIPS to the nationals of other members (by virtue of Article 1 of TRIPS). In accordance with Article 65 of TRIPS, Australia is obliged to give effect to the TRIPS obligations within one year of the coming into force of the WTO Agreement. The WTO Agreement came into force on 1 January 1995.

The other members of the WTO have, therefore, been declared to be eligible foreign countries in compliance with the provisions of sections 42 and 48 of the Act and in accordance with Australia's international obligations.

The Regulations commenced on Gazetta.