

Circuit Layouts Amendment Regulations 1998 (No. 1) 1998 No. 358

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 358

Issued by the authority of the Attorney-General

Circuit Layouts Act 1989

Circuit Layouts Amendment Regulations 1998 (No. 1)

The Circuit Layouts Act 1989 (the Act) provides for rights in respect of eligible layouts. Eligible layouts are original circuit layouts (that is, representations of the three dimensional location of the elements and interconnections making up an integrated circuit (eg, a computer chip)) made by an "eligible person" or first commercially exploited in Australia or in an "eligible foreign country".

Section 5 provides a definition of eligible foreign country as being a country declared by the regulations to be such. An eligible person (as provided by section 5 of the Act) is a citizen of, resident of, or corporation registered in, Australia or an eligible foreign country or an Australian protected person.

Section 48 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed for carrying out or giving effect to the Act.

Section 42 provides that a country may not be declared an eligible foreign country unless it is a party to a convention protecting circuit layouts to which Australia is also a party, or unless the Governor-General is satisfied that, although the country is not a member of such a convention, provision is, or will be, made in that country for the protection of circuit layouts of Australian citizens, residents or protected persons or circuit layouts first commercially exploited in Australia.

Australia is a member of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) which came into force on 1 January 1995. TRIPs contains operative provisions concerned with the protection of circuit layouts that are given effect in the Act. TRIPs places mandatory obligations on Australia to grant the rights set out in TRIPs to the citizens and residents of all other member countries. TRIPs is a subsidiary agreement to the World Trade Organization (WTO) Agreement, of which Australia is a member. All countries joining the WTO automatically become members of TRIPs.

Regulation 3 of the *Circuit Layouts Regulations* (the Principal Regulations) provides that the countries listed in the Schedule are eligible foreign countries for the purposes of the Act.

The amendment regulations update the list of countries in the Schedule to the Principal Regulations, in consequence of the accession of new member countries to the WTO since the list was last updated in December 1995.

This has the effect of extending the protection of the Act to circuit layouts made by citizens, residents and corporations of those new member countries of the WTO consistent with Australia's obligations under TRIPs.

Details of the amendment regulations are included in the Attachment.

The amendment regulations commence on gazettal.

ATTACHMENT

Regulation 1 provides that the amendment regulations are the *Circuit Layouts Amendment Regulations 1998* and the appropriate number is inserted.

Regulation 2 provides that the amendment regulations commence on gazettal.

Regulation 3 is a machinery provision that provides that Schedule 1 to the amendment regulations amends the Principal Regulations.

Schedule 1, item 1 amends the name of the Principal Regulations, in accordance with current drafting practice, so that the Principal Regulations are titled the *Circuit Layouts Regulations 1990*.

Schedule 1, item 2 remakes the Schedule to the Principal Regulations to add the following countries, which have become members of the WTO since December 1995: Angola, Benin, Bulgaria, Cameroon, Chad, Congo, Democratic Republic of the Congo, Ecuador, Fiji, Gambia, Grenada, Haiti, Madagascar, Mongolia, Niger, Panama, Papua New Guinea, Qatar, Rwanda, Saint Kitts and Nevis, Solomon Islands and the United Arab Emirates.