

Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003 2003 No. 97

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 97

Issued by the Authority of the Minister for Trade

Charter of the United Nations Act 1945

Customs Act 1901

Air Navigation Act 1920

Migration Act 1958

Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003

Section 6 of the *Charter of the United Nations Act 1945* provides that the Governor-General may make Regulations for, and in relation to, giving effect to decisions that:

- (a) the Security Council has made under Chapter VII of the Charter of the United Nations; and
- (b) Article 25 of the Charter requires Australia to carry out;

insofar as those decisions require Australia to apply measures not involving the use of armed force.

Section 270 of the *Customs Act 1901* provides in part that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect to the Act.

Section 26 of the *Air Navigation Act 1926* provides in part that the Governor-General may make regulations, not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 504 of the *Migration Act 1958* provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

On 22 May 2003 the United Nations Security Council adopted Resolution 1483 (2003) terminating all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992) of 2 October 1992, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel other than those arms and related materiel required by Coalition Forces to serve the purposes of this and other related resolutions. .

Resolution 1483 (2003) also imposed new obligations on United Nations Member States to:

- (a) establish a prohibition on trade in or transfer of Iraqi cultural property illegally removed (or reasonably suspected of having been illegally removed) from Iraq since 2 August 1990, and to facilitate the return to Iraqi institutions of such property;

(b) provide for the immunity of petroleum, petroleum products and natural gas originating in Iraq, until title passes to the initial purchaser, from legal proceedings against them and from any form of attachment, garnishment or execution;

(c) freeze without delay, and immediately transfer to the Development Fund of Iraq, any funds or other financial assets or economic resources (i) of the previous Government of Iraq or its state bodies, corporations or agencies located outside of Iraq as of 22 May 2003 or (ii) that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members and entities owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction;

(d) provide for (i) the proceeds and obligations arising from sales of petroleum, petroleum products and natural gas originating in Iraq; (ii) the Development Fund of Iraq; and (iii) the funds or other financial assets or economic resources referred to in para (c) above, to enjoy privileges and immunities equivalent to those enjoyed by the United Nations (such privileges and immunities not to apply with respect to any legal proceeding in which recourse to such proceeds or obligations is necessary to satisfy liability for damages assessed in connection with an ecological accident that occurs after 22 May 2003).

The purpose of the proposed regulations is to remove the measures currently in place in Australia which had been necessary to implement trade and economic sanctions against Iraq under Resolution 661 (1990) and to implement the new obligations on United Nations Member States to assist post-war recovery in Iraq, imposed by Resolution 1483 (2003).

The proposed regulations will:

- amend the Air Navigation Regulations 1947, the Customs (Prohibited Exports) Regulations 1958 and the Customs (Prohibited Imports) Regulations 1956 to remove regulations implementing the sanctions against Iraq;
- repeal the Migration (Iraq - United Nations Security Council Resolutions) Regulations 1994 (Statutory Rules 1994 No. 265; 1997 No. 403; and 2001 No. 240);
- implement the new obligations enumerated above.

The proposed regulations will commence on gazettal.

ATTACHMENT

Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003

Details of the proposed Regulations are as follows:

Regulation 1 states the name of the Regulations;

Regulation 2 states that the Regulations commence on gazettal;

Regulation 3 defines "asset", "Charter Act", "government asset", "item of cultural property", "previous government of Iraq", "Resolution 661", "Resolution 1483", "senior Iraqi official", and "transfer";

Regulation 4 provides that the Regulations have extra-territorial operation according to their terms;

Regulation 5 provides that the Regulations apply to a person in Australia or a citizen of Australia who is outside Australia;

Regulation 6 provides that Chapter 2 of the *Criminal Code* applies to all offences created by these Regulations;

Regulation 7 provides that a person must not transfer an item of cultural property that was illegally removed from a place in Iraq (including the Iraq National Museum or the National Library of Iraq) after the adoption of Resolution 661, or that the person ought reasonably to suspect had been so removed;

Regulation 8 provides that a person who is in possession or control of an item of cultural property mentioned in regulation 7 must, as soon as practicable, give the property to:

- (a) a member of the personnel of the United Nations; or
- (b) a member of the Defence Forces; or
- (c) a representative of the Authority mentioned in Resolution 1483; or
- (d) a representative of the Iraq National Museum or the National Library of Iraq; or
- (e) a representative of the place from which the item was removed, or is reasonably suspected of having been removed; or
- (f) a member of the Australian Federal Police, or of a police force of a State or Territory;

Regulation 9 (1) provides that an action, suit or proceeding does not lie in respect of anything done, or omitted to be done, in relation to:

- (a) petroleum that originates in Iraq; or
- (b) another petroleum product that originates in Iraq; or
- (c) natural gas that originates in Iraq;

at any time before the title in the petroleum, petroleum product or natural gas passes to the initial purchaser of the petroleum, petroleum product or natural gas;

Regulation 9 (2) states that regulation 9 ceases to have effect on the earlier of:

- (a) the end of 31 December 2007; and
- (b) the time, before the end of 31 December 2007, that the Security Council declares to be the time at which it is no longer necessary for the arrangement described in subregulation (1) to operate;

Regulation 10 (1) provides that a person who holds a government asset commits an offence if the person, other than in accordance with a notice under regulation 12, uses or deals with the asset, or allows it to be used or dealt with or facilitates the use of or dealing with the asset;

Regulation 10 (2) provides that strict liability applies to the circumstance that the use or dealing with the government asset is not in accordance with a notice under regulation 12;

Regulation 10 (3) provides that it is a defence if the person proves that the use or dealing was solely for the purpose of preserving the value of the government asset;

Regulation 10 (4) provides that section 15.1 of the *Criminal Code* (extended geographical jurisdiction -- category A) applies to an offence against subregulation 10 (1);

Regulation 11 (1) provides that a person commits an offence if the person, directly or indirectly, makes a government asset available to a person or entity other than the Development Fund for Iraq or other in accordance with a notice under regulation 12.

Regulation 11 (2) provides that strict liability applies to the circumstance that the making available of the asset is not in accordance with a notice under regulation 12.

Regulation 11 (3) provides that section 15.1 of the *Criminal Code* (extended geographical jurisdiction -- category A) applies to an offence against subregulation 11 (1);

Regulation 12 (1) provides that the owner or holder of a government asset may apply in writing to the Minister for permission to use or deal with the government asset in a specified way.

Regulation 12 (2) provides that the owner or holder of a government asset may apply in writing to the Minister for permission to make the government asset available to a person or entity specified in the application.

Regulation 12 (3) provides that the Minister may, by written notice:

- (a) permit a government asset specified in the notice to be used or dealt with in a specified way; or
- (b) permit a government asset specified in the notice to be made available to a person or entity specified in the notice.

Regulation 12 (4) provides that the Minister may issue a notice referred to in subregulation 12 (3) on his or her own initiative or upon application under subregulation 12 (1) or (2).

Regulation 12 (5) provides that the notice referred to in subregulation 12 (3) may be subject to conditions.

Regulation 12 (6) provides that the notice referred to in subregulation 12 (3) must be given to the owner or holder of the asset as soon as practicable after it is made.

Regulation 12 (7) The Minister may delegate the Minister's powers and functions under this regulation to:

- (a) the Secretary of the Department; or
- (b) an SES employee, or acting SES employee, in the Department.

Regulation 12 (8) provides that the delegation referred to in subregulation 12 (7) must be in writing.

Regulation 12 (9) provides that the delegate must comply with any directions of the Minister in exercising powers or functions under the delegation referred to in subregulation 12 (7);

Regulation 13 provides that a person is not liable to an action, suit or proceeding for anything done or omitted to be done in good faith and without negligence in compliance or purported compliance with regulations 10, 11 and 12;

Regulation 14 provides that the Minister may make arrangements, to have force according to their terms, for the transfer, as soon as practicable, of government assets which are not the subject of a judicial, administrative, or arbitral lien or judgment that commenced before the commencement of these Regulations to the Development Fund for Iraq;

Regulation 15 (1) provides that the Development Fund for Iraq has the same privileges and immunities as the United Nations under the *United Nations (Privileges And Immunities) Regulations 1986*, including privileges and immunities in relation to proceeds of, and obligations arising from, the transfer of:

- (a) petroleum that originates in Iraq; or
- (b) another petroleum product that originates in Iraq; or
- (c) natural gas that originates in Iraq;

Regulation 15 (2) provides that subregulation (1) does not apply in relation to any legal proceeding in which recourse to proceeds, obligations or assets is necessary to satisfy liability for damages assessed in connection with an ecological accident (including an oil spill) that occurs after the date of adoption of Resolution 1483;

Regulation 17 (1) states that Part 1 of Schedule 1 amends the *Air Navigation Regulations 1947*;

Regulation 17 (2) states that Part 2 of Schedule 1 amends the *Customs (Prohibited Exports) Regulations 1958*;

Regulation 17 (3) states that Part 3 of Schedule 1 amends the *Customs (Prohibited Exports) Regulations 1958*;

Regulation 17 (4) states that Part 4 of Schedule 1 repeals the *Migration (Iraq - United Nations Security Council Resolutions) Regulations 1994*;

Part 1 of Schedule 1 provides for regulation 119 of the *Air Navigation Regulations 1947* to be omitted;

Part 2 of Schedule 1 provides for regulation 13CA of the *Customs (Prohibited Exports) Regulations 1958* to be omitted;

Part 3 of Schedule 1 substitutes new text for subregulation 4MA (2) of the *Customs (Prohibited Imports) Regulations 1956* and provides for regulation 4QA of the *Customs (Prohibited Imports) Regulations 1956* to be omitted;

Part 4 of Schedule 1 provides for the repeal of Statutory Rules 1994 No. 265, 1997 No. 403 and 2001 No. 240.