

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 19**

Issued by the authority of the Attorney-General

*Circuit Layouts Act 1989*

*Circuit Layouts Amendment Regulations 2008 (No. 1)*

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

The Act provides for a scheme of intellectual property protection for the layout-designs (topographies) of integrated circuits (also referred to as computer chip designs or semi-conductor chips). The Act protects plans which show the three-dimensional location of the electronic components of an integrated circuit and gives the owner of the plans certain rights.

The Act protects original circuit layouts made by an Australian citizen or an Australian corporation, or first commercially exploited in Australia. In addition, any layout originating from a country declared in the *Circuit Layout Regulations 1990* (the Principal Regulations) as an 'eligible foreign country' will also be an eligible layout given protection by the Act.

The purpose of the Regulations is to update the way that 'eligible foreign countries' are listed for the purposes of the Act.

Protection of circuit layouts is an international requirement under the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Member countries of the World Trade Organization (the WTO) are required by the TRIPS Agreement to protect circuit layout-designs. The TRIPS Agreement came into force in Australia on 1 January 1995.

'Eligible foreign country' is defined in section 5 of the Act as a foreign country declared by the Regulations to be an eligible foreign country for the purposes of the Act. However, section 42 of the Act provides that a foreign country shall not be declared to be an eligible foreign country for the purposes of the Act unless:

- (a) the country is a party to a convention relating to the protection of circuit layouts and:
  - i. Australia is also a party to the convention; or
  - ii. Australia, although not a party to the convention, has taken all necessary steps to become such a party; or
- (b) the Governor-General is satisfied that, although the foreign country is not a party to such a convention, provision is or will be made under the law of that country under which adequate protection is or will be given to circuit layouts made by an Australian citizen, a person resident in Australia or a body

corporate incorporated under a law in force in a State or Territory and to circuit layouts first commercially exploited in Australia.

In accordance with section 42 of the Act, any WTO member may be declared to be an eligible foreign country.

Regulation 3 of the Principal Regulations currently provides that a foreign country specified in the Schedule to the Principal Regulations is an eligible foreign country for the purposes of the Act.

The Regulations amend the Principal Regulations by updating the eligible foreign countries to which Australia extends protection of circuit layouts. The Regulations repeal the list of countries currently specified under regulation 3 of the Principal Regulations, and instead recognise 'eligible foreign countries' by virtue of their membership of the WTO. This mechanism enables the Principal Regulations to self-update each time a new country joins the WTO.

This mechanism is possible because under subsection 13 (3) of the *Legislative Instruments Act 2003*, when declaring matters in regulations, matters can be identified by referring to a class or classes of matters or things. This allows 'eligible foreign countries' declared under the Act to be identified in the Regulations as a class, that is, as members of the WTO.

Details of the Regulations are set out in the [Attachment](#).

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**ATTACHMENT**

**Details of the *Circuit Layouts Amendment Regulations 2008 (No. 1)***

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Circuit Layouts Amendment Regulations 2008 (No. 1)*

**Regulation 2 – Commencement**

This regulation provides that the Regulations commence on the day after they are registered.

**Regulation 3 – Amendment of *Circuit Layouts Regulations 1990***

This regulation provides that the *Circuit Layouts Regulations 1990* (the Principal Regulations) are amended in accordance with Schedule 1.

**Schedule 1 – Amendments**

**Item [1] – Regulation 3**

This item repeals regulation 3 of the Principal Regulations and substitutes new regulation 3 which identifies ‘eligible foreign countries’ by virtue of their membership of the World Trade Organisation, whether as a member, separate customs territory or a territory of a member.

**Item [2] – Schedule**

This item repeals the Schedule to the Principal Regulations.