



International Trade Integrity Act 2007

No. 147, 2007

An Act to implement the Australian Government's response to recommendations made by the Inquiry into Certain Australian Companies in relation to the United Nations Oil-for-Food Programme, and for other purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to implement the Australian Government's response to recommendations made by the Inquiry into Certain Australian Companies in relation to the United Nations Oil-for-Food Programme, and for other purposes

[Assented to 24 September 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *International Trade Integrity Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	24 September 2007
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	25 September 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Enforcing UN sanctions

Charter of the United Nations Act 1945

1 Section 2

Repeal the section, substitute:

2 Definitions

In this Act:

asset means:

- (a) an asset of any kind or property of any kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) a legal document or instrument in any form, including electronic or digital, evidencing title to, or interest in, such an asset or such property, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

CEO, in relation to a Commonwealth entity, means the chief executive officer (however described) of that entity.

Charter of the United Nations means the Charter of the United Nations, done at San Francisco on 26 June 1945 [1945] ATS 1.

Note: The text of the Charter of the United Nations is set out in Australian Treaty Series 1945 No. 1. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

Commonwealth entity means:

- (a) an agency (within the meaning of the *Financial Management and Accountability Act 1997*); or
- (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*).

designated Commonwealth entity means a Commonwealth entity that is specified in an instrument under section 2A.

foreign government entity means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country.

officer of a Commonwealth entity includes:

- (a) the CEO of the Commonwealth entity; and
- (b) an employee of the Commonwealth entity; and
- (c) any other person engaged by the Commonwealth entity, under contract or otherwise, to exercise powers, or perform duties or functions, of the Commonwealth entity.

public international organisation has the meaning given by section 70.1 of the *Criminal Code*.

State or Territory entity means:

- (a) a State or Territory; or
- (b) an authority of a State or Territory.

UN sanction enforcement law means a provision that is specified in an instrument under subsection 2B(1).

2 After section 2

Insert:

2A Meaning of *designated Commonwealth entity*

The Minister may, by legislative instrument, specify a Commonwealth entity as a *designated Commonwealth entity*.

2B Meaning of *UN sanction enforcement law*

- (1) The Minister may, by legislative instrument, specify a provision of a law of the Commonwealth as a *UN sanction enforcement law*.
- (2) The Minister may specify a provision in relation to particular circumstances.
- (3) The Minister may only specify a provision to the extent that it gives effect to a decision 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; in so far as that decision requires Australia to apply measures not involving the use of armed force.

Note: Articles 39 and 41 of the Charter provide for the Security Council to decide what measures not involving the use of armed force are to be taken to maintain or restore international peace and security.

- (4) A provision may be specified whether or not the provision is made for the sole purpose of giving effect to a decision of the Security Council.
- (5) A provision ceases to be a *UN sanction enforcement law* to a particular extent if:
- (a) Article 25 of the Charter of the United Nations ceases to require Australia to carry out a decision referred to in subsection (3); and
 - (b) the provision gave effect to that decision to that extent; and
 - (c) the provision does not give effect to any other decision referred to in subsection (3) to that extent.

3 Section 6

Before “The Governor-General”, insert “(1)”.

4 Paragraph 6(a)

Omit “has made”, substitute “makes”.

5 At the end of section 6

Add:

- (2) Without limiting subsection (1), the regulations may give effect to a decision of the Security Council by any or all of the following means:
- (a) proscribing persons or entities;
 - (b) restricting or preventing uses of, dealings with, and making available, assets;
 - (c) restricting or preventing the supply, sale or transfer of goods or services;
 - (d) restricting or preventing the procurement of goods or services;
 - (e) providing for indemnities for acting in compliance or purported compliance with those regulations;

- (f) providing for compensation for owners of assets;
 - (g) authorising the making of legislative instruments.
- (3) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, regulations made for the purposes of subsection (1) may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

6 At the end of Division 2 of Part 3

Add:

13A Invalidation of permission, authorisations etc.

A licence, permission, consent, approval or authorisation granted under the regulations (a *relevant authorisation*) is taken never to have been granted if information contained in, or information or a document accompanying, the application for the relevant authorisation:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the information or document is misleading in a material particular.

7 Application

Section 13A of the *Charter of the United Nations Act 1945*, as in force after the commencement of this item, applies in relation to a relevant authorisation granted in respect of an application made on or after that commencement.

8 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Security Council decisions that relate to terrorism and dealings with assets

9 Section 14 (definition of asset)

Repeal the definition.

10 Subsection 20(1)

Omit “A person”, substitute “An individual”.

Note: The following heading to subsection 20(1) is inserted “*Offence for individuals*”.

11 Paragraphs 20(1)(a) and (b)

Omit “person”, substitute “individual”.

12 Subsection 20(1) (penalty)

Repeal the penalty.

13 At the end of subsection 20(2)

Add:

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

14 Subsection 20(3)

Omit “person”, substitute “individual”.

15 At the end of subsection 20(3)

Add:

Note: The individual bears a legal burden in relation to a matter in subsection (3) (see section 13.4 of the *Criminal Code*).

16 After subsection 20(3)

Insert:

Penalty for individuals

- (3A) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (3B), or both.
- (3B) For the purposes of subsection (3A), the amount is:
- (a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:
 - (i) 3 times the value of the transaction or transactions;
 - (ii) 2,500 penalty units; or
 - (b) otherwise—2,500 penalty units.

Offence for bodies corporate

- (3C) A body corporate commits an offence if:
- (a) the body corporate holds an asset; and
 - (b) the body corporate:
 - (i) uses or deals with the asset; or
 - (ii) allows the asset to be used or dealt with; or
 - (iii) facilitates the use of the asset or dealing with the asset; and
 - (c) the asset is a freezable asset; and
 - (d) the use or dealing is not in accordance with a notice under section 22.

- (3D) An offence under subsection (3C) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3E) It is a defence if the body corporate proves that:
- (a) the use or dealing was solely for the purpose of preserving the value of the asset; or
 - (b) the body corporate took reasonable precautions, and exercised due diligence, to avoid contravening subsection (3C).

Note: The body corporate bears a legal burden in relation to a matter in subsection (3E) (see section 13.4 of the *Criminal Code*).

Penalty for bodies corporate

- (3F) An offence under subsection (3C) is punishable on conviction by a fine not exceeding:
- (a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:
 - (i) 3 times the value of the transaction or transactions;
 - (ii) 10,000 penalty units; or
 - (b) otherwise—10,000 penalty units.

17 Subsection 20(4)

After “subsection (1)”, insert “or (3C)”.

18 Subsection 21(1)

Omit “A person”, substitute “An individual”.

Note: The following heading to subsection 21(1) is inserted “*Offence for individuals*”.

19 Paragraph 21(1)(a)

Omit “person” (first occurring), substitute “individual”.

20 Subsection 21(1) (penalty)

Repeal the penalty.

21 At the end of subsection 21(2)

Add:

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

22 After subsection 21(2)

Insert:

Penalty for individuals

- (2A) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (2B), or both.
- (2B) For the purposes of subsection (2A), the amount is:
- (a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:
 - (i) 3 times the value of the transaction or transactions;
 - (ii) 2,500 penalty units; or
 - (b) otherwise—2,500 penalty units.

Offence for bodies corporate

- (2C) A body corporate commits an offence if:
- (a) the body corporate, directly or indirectly, makes an asset available to a person or entity; and
 - (b) the person or entity to whom the asset is made available is a proscribed person or entity; and
 - (c) the making available of the asset is not in accordance with a notice under section 22.

(2D) An offence under subsection (2C) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2E) It is a defence if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening subsection (2C).

Note: The body corporate bears a legal burden in relation to a matter in subsection (2E) (see section 13.4 of the *Criminal Code*).

Penalty for bodies corporate

(2F) An offence under subsection (2C) is punishable on conviction by a fine not exceeding:

(a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:

- (i) 3 times the value of the transaction or transactions;
- (ii) 10,000 penalty units; or

(b) otherwise—10,000 penalty units.

23 Subsection 21(3)

After “subsection (1)”, insert “or (2C)”.

24 After section 22A

Insert:

22B Invalidation of notice for false or misleading information

A notice under section 22 is taken never to have been made if information contained in, or information or a document accompanying, the application for the notice:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the information or document is misleading in a material particular.

25 Application

Section 22B of the *Charter of the United Nations Act 1945*, as in force after the commencement of this item, applies in relation to a notice made in respect of an application made on or after that commencement.

26 After Part 4

Insert:

Part 5—Offences relating to UN sanctions

27 Offence—Contravening a UN sanction enforcement law

Individuals

- (1) An individual commits an offence if:
 - (a) the individual engages in conduct; and
 - (b) the conduct contravenes a UN sanction enforcement law.
- (2) An individual commits an offence if:
 - (a) the individual engages in conduct; and
 - (b) the conduct contravenes a condition of a licence, permission, consent, authorisation or approval (however described) under a UN sanction enforcement law.
- (3) An offence under subsection (1) or (2) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (4), or both.
- (4) For the purposes of subsection (3), the amount is:
 - (a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:
 - (i) 3 times the value of the transaction or transactions;
 - (ii) 2,500 penalty units; or
 - (b) otherwise—2,500 penalty units.

Bodies corporate

- (5) A body corporate commits an offence if:
 - (a) the body corporate engages in conduct; and
 - (b) the conduct contravenes a UN sanction enforcement law.
- (6) A body corporate commits an offence if:
 - (a) the body corporate engages in conduct; and

(b) the conduct contravenes a condition of a licence, permission, consent, authorisation or approval (however described) under a UN sanction enforcement law.

(7) Subsection (5) or (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

(8) An offence under subsection (5) or (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(9) An offence under subsection (5) or (6) is punishable on conviction by a fine not exceeding:

(a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:

- (i) 3 times the value of the transaction or transactions;
- (ii) 10,000 penalty units; or

(b) otherwise—10,000 penalty units.

Definitions

(10) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

28 Offence—False or misleading information given in connection with a UN sanction enforcement law

(1) A person commits an offence if:

- (a) the person gives information or a document to a Commonwealth entity; and
- (b) the information or document is given in connection with the administration of a UN sanction enforcement law; and
- (c) the information or document:
 - (i) is false or misleading; or

- (ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

- (2) A person (the ***first person***) commits an offence if:
 - (a) the first person gives information or a document to another person; and
 - (b) the first person is reckless as to whether the other person or someone else will give the information or document to a Commonwealth entity in connection with the administration of a UN sanction enforcement law; and
 - (c) the information or document:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

- (3) Subsection (1) or (2) does not apply:
 - (a) as a result of subparagraph (1)(c)(i) or (2)(c)(i)—if the information or document is not false or misleading in a material particular; or
 - (b) as a result of subparagraph (1)(c)(ii) or (2)(c)(ii)—if the information or document did not omit any matter or thing without which the information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Geographical application of offences

- (4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1) or (2).

Part 6—Information relating to UN sanctions

29 CEO of Commonwealth entity may give information or document

- (1) The CEO of a Commonwealth entity may give any information or document to the CEO of a designated Commonwealth entity for a purpose in connection with the administration of a UN sanction enforcement law.
- (2) Subsection (1) applies despite any other law of the Commonwealth, a State or a Territory.

30 Power to require information or documents to be given

- (1) The CEO of a designated Commonwealth entity may, for the purpose of determining whether a UN sanction enforcement law has been or is being complied with, give a person a written notice requiring the person to do either or both of the following:
 - (a) to give the CEO information of the kind, by the time and in any manner or form, specified in the notice;
 - (b) to give the CEO documents of the kind, by the time and in any manner, specified in the notice.
- (2) The person must comply with the notice despite any other law of the Commonwealth, a State or a Territory.
- (3) The time specified in the notice must be reasonable, having regard to all the circumstances.
- (4) The person may, before the time specified in the notice, request the CEO to extend the time by which the information or documents must be given.
- (5) The CEO may, by written notice given to the person, vary the notice under subsection (1) to specify a later time by which the information or documents must be given.
- (6) Subsection (5) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a notice under subsection (1).

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* deals with revocation and variation etc. of instruments.

- (7) Subsection (1) does not apply if:
- (a) the person is the Commonwealth or a Commonwealth entity;
or
 - (b) the person:
 - (i) is, or has at any time been, an officer of a Commonwealth entity; and
 - (ii) obtained or generated the information or document in the course of carrying out his or her duties as an officer of the Commonwealth entity.

31 Information may be required to be given on oath

- (1) The CEO may require the information to be verified by, or given on, oath or affirmation.
- (2) The oath or affirmation is an oath or affirmation that the information is true.

32 Offence for failure to comply with requirement

- (1) A person commits an offence if:
 - (a) the person has been given a notice under section 30; and
 - (b) the person does not comply with the notice.

Penalty: Imprisonment for 12 months.

- (2) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

33 Self-incrimination not an excuse

- (1) An individual is not excused from giving information or a document under section 30 on the ground that the information, or the giving of the document, might tend to incriminate the individual or otherwise expose the individual to a penalty or other liability.
- (2) However, neither the information given nor the giving of the document is admissible in evidence against the individual in any

criminal proceedings, or in any proceedings that would expose the individual to a penalty, other than proceedings for an offence against:

- (a) section 28 (false or misleading information given in connection with a UN sanction enforcement law); or
- (b) section 32 (failure to comply with requirement to give information or document).

34 CEO may copy documents

If a person gives a document to the CEO of a designated Commonwealth entity under section 30, the CEO:

- (a) may take and keep a copy of the document; and
- (b) must return the document to the person within a reasonable time.

35 Further disclosure and use of information and documents

Disclosure and use of information etc. within entity

- (1) An officer of a designated Commonwealth entity may do any of the following for a purpose in connection with the administration of a UN sanction enforcement law or with a decision of the Security Council referred to in section 6:
 - (a) copy, make a record of or use, any information or document;
 - (b) disclose any information, or give any document, to another officer of that entity.

Disclosure outside of entity

- (2) A CEO of a designated Commonwealth entity may disclose any information or give any document to any of the following for a purpose in connection with the administration of a UN sanction enforcement law or with a decision of the Security Council referred to in section 6:
 - (a) a Minister of the Commonwealth, a State or a Territory;
 - (b) the CEO of another Commonwealth entity;
 - (c) a State or Territory entity;
 - (d) a foreign government entity;
 - (e) a public international organisation;
 - (f) a person specified in an instrument under subsection (3).

- (3) The Minister may, by legislative instrument, specify a person for the purposes of paragraph (2)(f).
- (4) Subsections (1) and (2) apply despite any other law of the Commonwealth, a State or a Territory.

36 Protection from liability

- (1) A person who, in good faith, gives, discloses, copies, makes a record of or uses information or a document under section 29, 30, 34 or 35 is not liable:
 - (a) to any proceedings for contravening any other law because of that conduct; or
 - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.
- (2) Subsection (1) does not prevent the person from being liable to a proceeding for conduct of the person that is revealed by the information or document.

37 Retention of records and documents

- (1) A person who applies for a licence, permission, consent, authorisation or approval under a UN sanction enforcement law (a **relevant authorisation**) must retain any records or documents relating to that application for the period of 5 years beginning on:
 - (a) if the relevant authorisation was granted—the last day on which an action to which the relevant authorisation relates was done; or
 - (b) if the relevant authorisation was not granted—the day on which the application was made.
- (2) A person who is granted a licence, permission, consent, authorisation or approval under a UN sanction enforcement law (a **relevant authorisation**) must retain any records or documents relating to the person's compliance with any conditions to which the relevant authorisation is subject for the period of 5 years beginning on the last day on which an action to which the relevant authorisation relates was done.

Note: A person may commit an offence if the person fails to give under section 30 a record or document that is required to be retained under this section: see section 32.

38 Delegation

- (1) The CEO of a Commonwealth entity may, by written instrument, delegate all or any of his or her powers or functions under this Part to:
 - (a) an SES employee or acting SES employee of the entity; or
 - (b) an employee of the entity of equivalent rank to an SES employee.
- (2) In exercising powers or performing functions delegated under subsection (1), the delegate must comply with any directions of the CEO.

Part 7—Miscellaneous

39 Regulations

- The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Customs Act 1901

27 Subsection 4(1)

Insert:

Charter of the United Nations means the Charter of the United Nations, done at San Francisco on 26 June 1945 [1945] ATS 1.

Note: The text of the Charter of the United Nations is set out in Australian Treaty Series 1945 No. 1. In 2007, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

28 Subsection 4(1)

Insert:

UN-sanctioned goods means goods that are prescribed as UN-sanctioned goods under subsection 233BABAA(1).

29 At the end of Division 1 of Part IV

Add:

52 Invalidation of licence, permission etc. for false or misleading information

A licence, permission, consent or approval granted in respect of the importation of UN-sanctioned goods is taken never to have been granted if:

- (a) an application for the licence, permission, consent or approval was made in an approved form; and
- (b) information contained in, or information or a document accompanying, the form:
 - (i) was false or misleading in a material particular; or
 - (ii) omitted any matter or thing without which the information or document is misleading in a material particular.

30 Application

Section 52 of the *Customs Act 1901*, as in force after the commencement of this item, applies in relation to a licence, permission, consent or approval granted in respect of an application made on or after that commencement.

31 At the end of Division 1 of Part VI

Add:

112B Invalidation of licence, permission etc. for false or misleading information

A licence, permission, consent or approval granted in respect of the exportation of UN-sanctioned goods is taken never to have been granted if:

- (a) an application for the licence, permission, consent or approval was made in an approved form; and
- (b) information contained in, or information or a document accompanying, the form:
 - (i) was false or misleading in a material particular; or
 - (ii) omitted any matter or thing without which the information or document is misleading in a material particular.

32 Application

Section 112B of the *Customs Act 1901*, as in force after the commencement of this item, applies in relation to a licence, permission, consent or approval granted in respect of an application made on or after that commencement.

33 Paragraph 210(1)(b)

Omit “or 233BAB(5) or (6)”, substitute “, 233BAB(5) or (6), 233BABAB(1) or 233BABAC(1)”.

34 After section 233BAB

Insert:

233BABAA UN-sanctioned goods

- (1) The regulations may prescribe specified goods as UN-sanctioned goods.
- (2) Regulations made for the purposes of subsection (1) may provide that specified goods are only UN-sanctioned goods if:
 - (a) they are imported from, or exported to, a specified place; or
 - (b) the origin, or the final destination, of the goods is a specified place; or
 - (c) other specified circumstances apply in relation to the goods.
- (3) The regulations must not prescribe goods for the purposes of subsection (1) unless:
 - (a) either:
 - (i) the importation of the goods is prohibited, either absolutely or on condition, by the *Customs (Prohibited Imports) Regulations 1956*; or
 - (ii) the exportation of the goods is prohibited, either absolutely or on condition, by the *Customs (Prohibited Exports) Regulations 1958*; and
 - (b) the regulation under which that importation or exportation is prohibited gives effect to a decision that:
 - (i) the Security Council has made under Chapter VII of the Charter of the United Nations; and
 - (ii) Article 25 of the Charter requires Australia to carry out;

in so far as that decision requires Australia to apply measures not involving the use of armed force.

Note: Articles 39 and 41 of the Charter provide for the Security Council to decide what measures not involving the use of armed force are to be taken to maintain or restore international peace and security.

- (4) For the purposes of paragraph (3)(b), a regulation may be taken to give effect to a decision:
- (a) whether or not it is made for the sole purpose of giving effect to the decision; and
 - (b) whether or not it has any effect in addition to giving effect to the decision.

233BABAB Special offences for importation of UN-sanctioned goods

Offence for individuals

- (1) An individual commits an offence if:
- (a) the individual intentionally imported goods; and
 - (b) the goods were UN-sanctioned goods and the individual was reckless as to that fact; and
 - (c) their importation:
 - (i) was prohibited under this Act absolutely; or
 - (ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.

- (2) Subject to subsection (3), absolute liability applies to paragraph (1)(c).

Note: For **absolute liability**, see section 6.2 of the *Criminal Code*.

- (3) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (1)(c)(ii) had not been obtained at the time of the importation.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

Penalty for individuals

- (4) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (5), or both.

- (5) For the purposes of subsection (4), the amount is:
- (a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:
 - (i) 3 times the value of the goods; or
 - (ii) 2,500 penalty units;
 - (b) if the Court cannot determine the value of those goods—2,500 penalty units.

Offence for bodies corporate

- (6) A body corporate commits an offence if:
- (a) the body corporate imported goods; and
 - (b) the goods were UN-sanctioned goods; and
 - (c) their importation:
 - (i) was prohibited under this Act absolutely; or
 - (ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the importation, that approval had not been obtained.
- (7) Subsection (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

- (8) Strict liability applies to paragraphs (6)(a) and (b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (9) Subject to subsection (10), absolute liability applies to paragraph (6)(c).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (10) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the importation.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Penalty for bodies corporate

- (11) An offence under subsection (6) is punishable on conviction by a fine not exceeding:
- (a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:
 - (i) 3 times the value of the goods;
 - (ii) 10,000 penalty units; or
 - (b) if the Court cannot determine the value of those goods—10,000 penalty units.

Person not liable to other proceedings

- (12) A person convicted or acquitted of an offence against subsection (1) or (6) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

233BABAC Special offences for exportation of UN-sanctioned goods

Offence for individuals

- (1) An individual commits an offence if:
- (a) the individual intentionally exported goods; and
 - (b) the goods were UN-sanctioned goods and the individual was reckless as to that fact; and
 - (c) their exportation:
 - (i) was prohibited under this Act absolutely; or
 - (ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.
- (2) Subject to subsection (3), absolute liability applies to paragraph (1)(c).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (3) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that an approval referred to in subparagraph (1)(c)(ii) had not been obtained at the time of the exportation.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Penalty for individuals

- (4) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (5), or both.
- (5) For the purposes of subsection (4), the amount is:
 - (a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:
 - (i) 3 times the value of the goods;
 - (ii) 2,500 penalty units; or
 - (b) if the Court cannot determine the value of those goods—2,500 penalty units.

Offence for bodies corporate

- (6) A body corporate commits an offence if:
 - (a) the body corporate exported goods; and
 - (b) the goods were UN-sanctioned goods; and
 - (c) their exportation:
 - (i) was prohibited under this Act absolutely; or
 - (ii) was prohibited under this Act unless the approval of a particular person had been obtained and, at the time of the exportation, that approval had not been obtained.
- (7) Subsection (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to a matter in subsection (7) (see section 13.4 of the *Criminal Code*).

- (8) Strict liability applies to paragraphs (6)(a) and (b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (9) Subject to subsection (10), absolute liability applies to paragraph (6)(c).

Note: For *absolute liability*, see section 6.2 of the *Criminal Code*.

- (10) For the purposes of an offence against subsection (6), strict liability applies to the physical element of circumstance of the offence, that

an approval referred to in subparagraph (6)(c)(ii) had not been obtained at the time of the exportation.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Penalty for bodies corporate

- (11) An offence under subsection (6) is punishable on conviction by a fine not exceeding:
- (a) if the Court can determine the value of the goods to which the offence relates—whichever is the greater of the following:
 - (i) 3 times the value of the goods;
 - (ii) 10,000 penalty units; or
 - (b) if the Court cannot determine the value of those goods—10,000 penalty units.

Person not liable to other proceedings

- (12) A person convicted or acquitted of an offence against subsection (1) or (6) in respect of particular conduct is not liable to proceedings under section 233 in respect of that conduct.

35 Subsection 233BAC(1)

Omit “or 233BAB(5) or (6)”, substitute “, 233BAB(5) or (6), 233BABAB(1) or (4) or 233BABAC(1) or (4)”.

36 Subsection 233BA(2)

After “section 233BAB”, insert “, 233BABAB or 233BABAC,”.

37 After section 233BA

Insert:

233C Offence for giving false or misleading information in relation to UN-sanctioned goods

Individuals

- (1) An individual commits an offence if:
- (a) an application is made in respect of UN-sanctioned goods under:
 - (i) the *Customs (Prohibited Imports) Regulations 1956*; or

- (ii) the *Customs (Prohibited Exports) Regulations 1958*;
and
- (b) the application is made in an approved form; and
- (c) the individual signed the form; and
- (d) information contained in, or information or a document accompanying, the form:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

Bodies corporate

- (2) A body corporate commits an offence if:
 - (a) an application is made by or on behalf of the body corporate;
and
 - (b) the application is in an approved form; and
 - (c) the application is made in respect of UN-sanctioned goods under:
 - (i) the *Customs (Prohibited Imports) Regulations 1956*; or
 - (ii) the *Customs (Prohibited Exports) Regulations 1958*;
and
 - (d) information contained in, or information or a document accompanying, the form:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information or document is misleading.

Penalty: 12,500 penalty units.

- (3) Subsection (1) or (2) does not apply:
 - (a) as a result of subparagraph (1)(d)(i) or (2)(d)(i)—if the information or document is not false or misleading in a material particular; or
 - (b) as a result of subparagraph (1)(d)(ii) or (2)(d)(ii)—if the information or document did not omit any matter or thing without which the information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Schedule 2—Bribery of foreign officials

Criminal Code Act 1995

1 After subsection 70.2(1) of the *Criminal Code*

Insert:

- (1A) In a prosecution for an offence under subsection (1), it is not necessary to prove that business, or a business advantage, was actually obtained or retained.

2 Paragraph 70.2(2)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;

3 Subsection 70.3(1) of the *Criminal Code* (table, heading to column 4)

Omit “the person would not have been guilty of an offence against...”, substitute “this written law requires or permits the provision of the benefit ...”.

4 Subsection 70.3(1) of the *Criminal Code* (table)

Before “law in” (wherever occurring), insert “written”.

Income Tax Assessment Act 1997

5 After subsection 26-52(2)

Insert:

- (2A) For the purposes of subsection (2), disregard whether business, or a business advantage, was actually obtained or retained.

6 Subsection 26-52(3)

Repeal the subsection (including the heading), substitute:

Payments that written law of foreign public official's country requires or permits

- (3) An amount is not a ***bribe to a foreign public official*** if, assuming the benefit had been provided, and all related acts had been done, in the *foreign public official's country, a written law of that country would have required or permitted the provision of the benefit.

7 Subsection 26-52(4)

Repeal the subsection (not including the heading), substitute:

- (4) An amount is not a ***bribe to a foreign public official*** if:
- (a) the value of the benefit is of a minor nature; and
 - (b) the amount is incurred for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature.

8 Paragraph 26-52(6)(a)

Repeal the paragraph, substitute:

- (a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;

9 Application

The amendments of the *Income Tax Assessment Act 1997* made by this Schedule apply to a loss or outgoing incurred on or after the commencement of this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 14 June 2007
Senate on 17 August 2007]*

(109/07)