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Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003¹

Statutory Rules 2003 No. /²

97

I, GUY STEPHEN MONTAGUE GREEN, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Customs Act 1901*, the *Air Navigation Act 1920*, the *Charter of the United Nations Act 1945* and the *Migration Act 1958*.

Dated 28 MAY 2003 2003

G S M Green
Administrator

By His Excellency's Command

MARK VAILE
Minister for Trade
for the Minister for Transport and Regional Services
for the Minister for Justice and Customs
for the Minister for Immigration and Multicultural and
Indigenous Affairs

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003*.

2 Commencement

These Regulations commence on gazettal.

3 Definitions

In these Regulations:

asset means an asset described in the definition of **asset** in section 14 of the Charter Act.

Charter Act means the *Charter of the United Nations Act 1945*.

government asset means the following assets:

- (a) an asset of the previous government of Iraq that was located outside Iraq on the date of adoption of Resolution 1483;
- (b) an asset that has been removed from Iraq, or acquired, by:
 - (i) a senior Iraqi official; or
 - (ii) a member of the immediate family of a senior Iraqi official; or
 - (iii) an entity owned or controlled, directly or indirectly by a body or person mentioned in subparagraph (i) or (ii); or
 - (iv) a person acting on behalf of, or at the direction of, a body or person mentioned in subparagraph (i), (ii) or (iii);
- (c) an asset derived or generated from an asset mentioned in paragraph (a) or (b).

item of cultural property includes an item of:

- (a) archaeological importance; or
- (b) historical importance; or

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- (c) cultural importance; or
- (d) rare scientific importance; or
- (e) religious importance.

previous government of Iraq means:

- (a) the government or governments of Iraq led by former President Saddam Hussein; and
- (b) a state body, corporation or other body or agency in relation to that government.

Resolution 661 means Resolution 661 (1990) of the Security Council of the United Nations.

Resolution 1483 means Resolution 1483 (2003) of the Security Council of the United Nations.

senior Iraqi official means the following persons:

- (a) former President Saddam Hussein;
- (b) another person who was a senior official of the previous government of Iraq.

transfer includes:

- (a) the transfer of title; and
- (b) trade.

4 Extra-territorial operation of Regulations

These Regulations have extra-territorial operation according to their terms.

5 Application of Regulations

These Regulations apply to a person in Australia or a citizen of Australia who is outside Australia.

6 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences created by these Regulations.

Note Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2 General provisions relating to Iraq

7 Cultural property

A person must not transfer an item of cultural property that:

- (a) 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
- (b) the person ought reasonably to suspect 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.

Penalty: 50 penalty units.

8 Return of cultural property

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.

Penalty: 50 penalty units.

Note The Commonwealth will make arrangements to ensure that a person mentioned in paragraph (b) or (f) will arrange for the safe return of an item to the appropriate institution in Iraq.

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9 Status of petroleum, petroleum products, and natural gas originating in Iraq

- (1) 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.
- (2) This regulation 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.

Part 3 Freezing government assets

10 Dealing with government assets

- (1) A person commits an offence if:
 - (a) the person holds a government asset; and
 - (b) the person:
 - (i) uses or deals with the government asset; or
 - (ii) allows the government asset to be used or dealt with; or
 - (iii) facilitates the use of the government asset or dealing with the government asset; and
 - (c) the use or dealing is not in accordance with a notice under regulation 12.

Penalty: 50 penalty units.

- (2) 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.
- (3) 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.
- (4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction — category A) applies to an offence against subregulation (1).

11 Offence — giving an asset to a person or entity

- (1) A person commits an offence if:
 - (a) the person, directly or indirectly, makes a government asset available to a person or entity; and
 - (b) the person or entity to whom the government asset is made available is not the Development Fund for Iraq; and

Regulation 12

- (c) the making available of the government asset is not in accordance with a notice under regulation 12.

Penalty: 50 penalty units.

- (2) Strict liability applies to the circumstance that the making available of the asset is not in accordance with a notice under regulation 12.
- (3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction — category A) applies to an offence against subregulation (1).

12 Authorised dealings

- (1) 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.
- (2) 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.
- (3) 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.
- (4) The Minister may issue such a notice on his or her own initiative or upon application under subregulation (1) or (2).
- (5) The notice may be subject to conditions.
- (6) The notice must be given to the owner or holder of the asset as soon as practicable after it is made.
- (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.
- (8) The delegation must be in writing.

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- (9) The delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.

13 Indemnity for holder of assets

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 this Part.

14 Arrangements for transfer of government assets

- (1) The Minister may make arrangements 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.
- (2) The arrangements have force according to their terms.

15 Privileges and immunities in relation to the Development Fund for Iraq

- (1) 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.
- (2) However, 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

Part 4 **Amendment and repeal of
other Regulations relating to
Iraq****17** **Amendment and repeal**

- (1) Part 1 of Schedule 1 amends the *Air Navigation Regulations 1947*.
- (2) Part 2 of Schedule 1 amends the *Customs (Prohibited Exports) Regulations 1958*.
- (3) Part 3 of Schedule 1 amends the *Customs (Prohibited Imports) Regulations 1956*.
- (4) Part 4 of Schedule 1 repeals the *Migration (Iraq — United Nations Security Council Resolutions) Regulations 1994*.

**Schedule 1 Amendment and repeal of
 other Regulations relating to
 Iraq**

(regulation 17)

**Part 1 Amendment of *Air Navigation
 Regulations 1947***

[101] Regulation 119

omit

**Part 2 Amendment of *Customs (Prohibited
 Exports) Regulations 1958***

[201] Regulation 13CA

omit

**Part 3 Amendments of *Customs (Prohibited
 Imports) Regulations 1956***

[301] Subregulation 4MA (2), note

substitute

Note Regulation 4N must also be complied with in relation to the importation of rough diamonds from Sierra Leone.

[302] Regulation 4QA

omit

Part 4 Repeal of Migration (Iraq — United Nations Security Council Resolutions) Regulations 1994

The following Statutory Rules are repealed:

- 1994 No. 265
- 1997 No. 403
- 2001 No. 240.

Notes

1. These Regulations amend (in Part 1 of Schedule 1) Statutory Rules 1947 No. 112, as amended by 1947 No. 162; 1948 No. 69; 1949 Nos. 6 and 70; 1950 No. 69; 1952 Nos. 30, 46 and 87; 1953 No. 44; 1954 Nos. 26, 32 and 119; 1955 No. 29; 1956 No. 16; 1957 No. 12; 1958 No. 77; 1960 Nos. 21, 96 and 99; 1961 No. 102; 1964 Nos. 61 and 128; 1965 No. 33; 1966 No. 5; 1967 No. 65; 1969 No.4; 1970 Nos. 21 and 214; 1971 No. 31; 1972 No. 166; 1973 Nos. 182 and 247; 1974 Nos. 36, 54 and 96; 1975 No. 32; 1976 Nos. 67, 77, 11 and 124; 1977 No. 124; 1978 No. 140; 1980 Nos. 67, 106, 136, 187, 204, 247 and 269; 1981 Nos. 32, 77, 253 and 308; Act No. 76, 1981; Statutory Rules 1982 No. 270; 1983 Nos. 39, 149 and 202; 1984 Nos. 208 and 314; 1985 Nos. 203, 276, 300 and 329; 1986 Nos. 141, 284 and 357; 1987 Nos. 207 and 278; 1988 Nos. 159 and 378; 1989 No. 400; 1990 Nos. 255, 299 and 432; 1991 Nos. 74 and 193; 1992 Nos. 104, 153, 221 and 316; 1993 Nos. 265, 318 and 369; 1994 Nos. 148 and 384; 1995 Nos. 29, 342 and 443; 1996 Nos. 113 and 340; 1997 Nos. 336 and 413; 1998 No. 321; 1999 No. 351; 2000 Nos. 96, 217 and 360; Act No. 137, 2000; Statutory Rules 2003 No. 5.

These Regulations also amend (in Part 2 of Schedule 1) Statutory Rules 1958 No. 5, as amended by 1959 No. 5; 1961 Nos. 16 and 112; 1963 Nos. 129 and 130; 1964 No. 144; 1965 No. 136; 1966 Nos. 70 and 75; 1967 Nos. 42, 59 and 123; 1968 Nos. 46, 83, 101, 153, 160 and 162; 1969 Nos. 11, 21, 22 and 219; 1970 Nos. 34, 68, 89, 106 and 121; 1972 No. 210; 1973 Nos. 4, 7, 39, 74, 102, 138, 218 and 248; 1974 Nos. 46, 157, 178 and 250; 1975 Nos. 19, 44, 45, 173 and 224; 1976 Nos. 169 and 233; 1977 No. 89; 1978 Nos. 14, 58, 59 and 277; 1979 Nos. 160 and 237; 1980 Nos. 21, 61, 72, 76, 82, 99, 110, 212, 273, 358, 381 and 383; 1981 Nos. 49, 72, 86, 149, 225, 251 and 324; 1982 Nos. 169, 171 and 310; 1983 No. 272; 1984 Nos. 35, 63, 191, 262, 263 and 316; 1985 Nos. 1, 68, 138 and 378; 1986 Nos. 76, 89, 177, 178, 328, 364, 365, 366 and 388; 1987 Nos. 97, 115, 156, 176, 301, 317, 318 and 319; 1988 Nos. 65, 178, 195 and 361; 1989 Nos. 57, 59, 196, 264 and 388; 1990 Nos. 125, 146,

190, 264, 333 and 438; 1991 Nos. 24, 77, 118, 288 and 413; 1992 Nos. 61, 83, 103, 155, 412 and 414; 1993 Nos. 68, 212, 258 and 322; 1994 Nos. 32, 143, 172, 242, 313, 379, 392 and 417; 1995 Nos. 71 and 90; 1996 Nos. 32, 47, 48, 49, 50 (Statutory Rules 1996 Nos. 47, 48, 49 and 50 were disallowed by the Senate on 23 May 1996), 69, 225, 281 and 282; 1997 Nos. 30, 31, 32, 33, 380, 381, 382 and 383; 1998 No. 211; 1999 Nos. 9, 164, 200, 216, 248, 274 and 331; 2000 Nos. 211 and 212; 2001 No. 171; 2002 Nos. 29, 139, 204, 205 and 330; 2003 Nos. 17, 44, 52 and 88.

These Regulations also amend (in Part 3 of Schedule 1) Statutory Rules 1956 No. 90, as amended by 1958 Nos. 6 and 67; 1959 Nos. 17, 31 and 93; 1960 No. 22; 1961 No. 117; 1962 No. 82; 1963 No. 26; 1964 Nos. 25 and 39; 1965 Nos. 81, 91, 135, 167 and 190; 1966 No. 95; 1967 Nos. 41, 58, 114 and 178; 1968 Nos. 100, 141 and 161; 1969 Nos. 2, 7, 10, 39, 43 and 218; 1970 Nos. 8, 72, 105 and 194; 1972 No. 97; 1973 Nos. 5, 6, 42, 43, 89, 93, 162, 175, 217, 227, 228 and 262; 1974 Nos. 123 and 249; 1975 Nos. 58, 62, 121, 172 and 183; 1976 Nos. 98, 159, 186 and 291; 1977 Nos. 18, 23, 24, 59, 67 and 162; 1978 No. 276; 1979 Nos. 145, 155 and 280; 1980 Nos. 71, 78, 150, 211, 368, 376, 380 and 382; 1981 Nos. 29, 71, 176, 309, 369 and 383; Act No. 75, 1981; Statutory Rules 1982 Nos. 44, 80, 102, 170, 236 and 252; 1983 No. 331; 1984 Nos. 55, 64, 102, 128, 260, 261, 317 and 318; 1985 Nos. 26, 96, 139, 160, 305 and 377; 1986 Nos. 180, 307, 342, 362 and 385; 1987 Nos. 37, 98, 101, 320 and 321; 1988 Nos. 64, 136, 177, 326, 327, 374 and 375; 1989 Nos. 60 and 379; 1990 Nos. 39, 191, 265, 324, 460 and 467; 1991 Nos. 23, 76, 248 and 289; 1992 Nos. 49, 154, 189, 286 and 413; 1993 Nos. 67, 211, 256, 257 and 382; 1994 Nos. 104, 171, 241, 314 and 378; 1995 Nos. 15, 89, 403 and 412; 1996 Nos. 31, 59, 68, 91, 123, 226, 324 and 325; 1997 Nos. 22, 93, 129, 254, 285, 317, 385 and 386; 1998 Nos. 4, 52, 58 and 228; 1999 Nos. 165, 201, 202, 217, 249, 250, 275, 332 and 333 (disallowed by the House of Representatives on 5 June 2000); 2000 Nos. 32, 75, 143, 213, 214, 215, 234 and 299; 2001 No. 60; 2002 Nos. 30, 81, 206, 331 and 332; 2003 Nos. 18, 26, 53, 54 and 89.

2. Notified in the *Commonwealth of Australia Gazette* on / 2003.

29 May