

**RECENT DEVELOPMENTS IN
AUSTRALIAN SPACE LAW**

In 2001, the Australian federal government added to the statutory framework that governs the space industry and space activities in Australia.

On 4 September 2001, the Space Activities (Bilateral Agreement) Act came into effect and amended the Space Activities Act 1998 by inserting into the latter, in the form of a new Schedule, the terms of a recent inter-governmental Agreement designed to facilitate the growth of the Australian space industry. This Agreement was made between Australia and the Russian Federation on 23 May 2001 and provides for co-operation in the exploration and use of outer space for peaceful purposes.¹ Amongst other things, the 2001 Act (including the Agreement) provided a framework for the release and protection of Russian technologies and intellectual property related to launch vehicles and other space-related applications.

The Agreement required amendments to the relevant customs legislation² because its terms required both governments to ensure that the movement of certain space technology goods across their customs borders was free of customs duties. The Australian government even went further when introducing this initiative. Peter Slipper, Parliamentary Secretary to the Minister for Finance and Administration, announced that subject to some administrative conditions, customs duty on all such imports, regardless of the country of origin, would be dropped.³ The policy ensured that companies sourcing technology from countries other than Russia would not be disadvantaged and it honoured Australia's continuing commitment to the World Trade Organisation on the reduction and removal of customs duties.⁴

¹ This Agreement replaced an earlier agreement made between Australia and the Soviet Union on 1 December 1987.

² Namely, the 2001 Customs Tariff Proposal No 5.

³ Wright, "Australia back in space race with technology tariff chop", 28 June 2001 at <<http://it.mycareer.com.au/breaking/2001/06/28/FFXDU24FHOC.html>>.

⁴ Commonwealth Parliamentary Debates (House of Representatives) 28648.

The 1998 Act would remain the primary legislation for Australian purposes in this area of law. It provided the framework for space launches originating from Australian territory or by Australians elsewhere, and for the recovery of overseas launched objects returning to Earth in Australian territory. The federal Minister for Industry, Tourism and Resources would be responsible for the administration of this Act and the Regulations made under it,⁵ and under Section 61, there would be a right of appeal from the Minister's decision to the Administrative Appeals Tribunal.

The 1998 Act addressed issues relating to licensing, safety, insurance, accident investigation and liability and it provided civil penalties, fines or gaol terms for various offences. Examples are:

- Part 3 provides for the approval of certain space activities carried on in Australia, including the approval of Australian nationals carrying on certain space activities outside Australia.
- Part 4 has rules on liability for damage caused by space activities.
- Part 5 establishes a Register of Space Objects.
- Part 5A provides a framework for the implementation of specified space cooperation agreements.
- Part 6 provides for civil penalties.
- Part 7 deals with accident and incident investigation.

The Act gave domestic effect to the five major United Nations treaties governing the exploration and use of outer space by including the texts of those agreements as schedules to the Act. The treaties are:⁶

⁵ Pursuant to the Administrative Arrangements Order of 20 December 2001.

⁶ See also United Nations, *United Nations Treaties and Principles on Outer Space* (1999, United Nations, Vienna). Besides these treaties, the United Nations General Assembly has adopted five sets of Principles on outer space. They are as follows: (1) Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space; (2) Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting; (3) Principles Relating to Remote Sensing of the Earth from Outer Space; (4) Principles Relevant to the Use of Nuclear Power Sources in Outer Space; and (5) Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries: *ibid.*

1. 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies;
2. 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space;
3. 1972 Convention on International Liability for Damage Caused by Space Objects;
4. 1975 Convention on Registration of Objects Launched into Outer Space; and
5. 1979 Agreement Governing the Activities of States on the Moon and other Celestial Bodies.

On 28 June 2001, the Governor-General-in-Council promulgated the Space Activities Regulations 2001 under the broader regulation-making power found in Section 110 of the 1998 Act. Generally speaking, the Regulations deal with the following:

1. Part 2 of the Regulations provides a mechanism for the grant of space licences. It sets out the criteria for the kind of launch vehicle to be used including the launch facility. It also sets out the standard space licence conditions and prescribes what information is required in applications for the grant or transfer of space licences.
2. Part 3 provides a process for the issue of launch permits and sets out the criteria similar to those required for the grant of a space licence. It also sets out standard launch permit conditions and requires the applicant to be adequately insured.
3. Part 4 prescribes the criteria for the issue of overseas launch certificates.
4. Part 5 contains the criteria for obtaining an authorisation for the return of overseas-launched space objects.
5. Part 6 sets out the matters that the Minister must consider before issuing an exemption certificate under Section 46.
6. Part 7 specifies the insurance and financial requirements that an applicant must satisfy including the methods for calculating the insurance requirements.
7. Part 8 deals with the powers and functions of the Launch Safety Officer. It also provides a list of persons and organisations to be notified of a planned launch.

8. Part 9 deals with the fees payable.
9. Part 10 deals with accident investigation.
10. Part 11 allows the Minister to delegate the powers given by the Regulations and provides for a review by the Administrative Appeals Tribunal of decisions made under the Regulations.

The 2001 measures combine to provide a legal framework within which the Australian launch industry may function. Quite apart from its legal operation, the fact that these initiatives have been undertaken suggests that the federal government is serious about the development of a space industry in Australia.⁷ When the 2001 Act was being read in Parliament, the Parliamentary Secretary to the Minister for Industry, Science and Resources, Warren Entsch, announced the first meeting of the International Space Advisory Group. Chaired by Dr Paul Scully-Power, the first Australian to travel to space, the Group was tasked with the development of a strategy to engage Australian industry and researchers in key international space programs.⁸

Several proposals for the construction of launch facilities were announced in Australia recently including the Asia Pacific Space Centre to be located on Christmas Island, a joint initiative with the Russian Aviation and Space Agency.⁹ In developing a launch industry, Australia's credible legal system is as much a competitive advantage as is its geographical location and technical expertise. The legislative provisions made in 2001 help to enhance Australia's general reputation in this regard and constitute one aspect of the infrastructure required for the establishment of such an industry.

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⁷ For the second reading speech on the 2001 Act and an indication of the federal government's policy, see Commonwealth Parliamentary Debates (House of Representatives) 27342.

⁸ Media Release, 5 June 2001 at <www.minister.industry.gov.au>.

⁹ Wright, "Australia back in space race with technology tariff chop", 28 June 2001 at <<http://it.mycareer.com.au/breaking/2001/06/28/FFXDU24FHOC.html>>.

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