

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 93**

#### *Defence Trade Controls Regulation 2013*

Section 75 of the *Defence Trade Controls Act 2012* (the Act) provides that the Governor-General may make regulations prescribing matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act implements the *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation* (the Treaty).<sup>1</sup> The Treaty creates a framework for two-way trade in defence articles between “trusted communities” within Australia and the United States of America, without the need for export licences. The Act implements this framework by establishing the Australian Community and providing for membership of that community for bodies corporate. The Act provides for the process for approving membership to the Australian Community and for the suspension and cancellation of membership. The Act also provides offences for individuals and companies who deal with defence articles contrary to the requirements of the Treaty.

The Act also strengthens Australia’s export controls over defence and dual-use goods to eliminate identified gaps in Australia’s export control system. The Act aligns Australia with accepted international best practice in relation to the export control regimes to which Australia belongs, and contributes to international efforts to prevent proliferation of sensitive technology. The Act controls the supply and publication of technology listed in the legislative instrument called the Defence and Strategic Goods List (DSGL)<sup>2</sup>. The Act also creates a registration and permit regime for the brokering of DSGL goods and technology.

The Regulation prescribes:

- (a) the requirements an employee or person engaged as a contractor of a body corporate must satisfy to be a member of the Australian Community under section 4 of the Act;
- (b) that the offences for the supply of DSGL technology under section 10 of the Act do not apply where:
  - i. persons hold a licence or permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*; or
  - ii. the supply of DSGL technology is by Australian and United States community members under the Treaty;

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<sup>1</sup> The text of the Treaty is publicly available and can be accessed electronically through the Australian Treaties Library available at <http://www.austlii.edu.au/dfat/>.

<sup>2</sup> The DSGL is publicly available and can be accessed electronically through the ComLaw website available at <http://www.comlaw.gov.au/>.

- (c) the criteria to be considered by the Minister when assessing applications for permits for the supply of technology under section 11 and for arranging the supply of goods or technology under 16 of the Act;
- (d) the conditions to which an approval for Australian Community membership under section 27 of the Act are subject, including conditions relating to:
  - i. access to US Defence Articles and related technology;
  - ii. the investigation and reporting of the loss, theft or destruction of US Defence Articles and related technology;
  - iii. the marking, handling and storing of US Defence Articles and related technology and services; and
  - iv. the marking of Australian Defence Articles and related technology and services;
- (e) the requirement for an Australian Community member approved under section 27 of the Act to provide an annual compliance report;
- (f) that the offences for the supply of US Defence Articles, related technology and defence services under section 31 of the Act do not apply where the receiver of the supply is an intermediate consignee;
- (g) the process for applying to be approved as an intermediate consignee for the purposes of the exception referred to in the previous paragraph;
- (h) the information to be included on identification cards for authorised officers carrying out compliance monitoring functions under Part 4 of the Act;
- (i) the information to be included in records to be kept by permit holders as required by section 58 for :
  - i. supplies of technology;
  - ii. brokering activities; and
  - iii. activities by Australian Community members.
- (j) the methods for giving a notice, permit or approval to a person as required under section 67 of the Act; and
- (k) the requirements for storage and destruction of goods, technology or things seized under the forfeiture provisions in section 71 of the Act.

Details of the Regulation are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences in accordance with section 2.

Public consultation has been undertaken in accordance with section 17 of the *Legislative Instruments Act 2003*.

Defence initiated two rounds of public consultation for the Regulation. The first consultation period commenced on 21 December 2011 and concluded on 17 February 2012, and the second period commenced on 5 February 2013 and concluded on 4 March 2013. The consultation on the Regulation included:

- (a) website release of the draft Regulation and Explanatory Statement with invitation to make email comment;
- (b) Departmental media release;
- (c) invitation extended to members of the Strengthened Export Controls Steering Group;
- (d) invitation extended to members of the Defence Trade Cooperation Treaty Industry Advisory Panel (DIAP);
- (e) email notification to relevant government agencies – including:
  - i. The Attorney-General's Department
  - ii. The Department of Foreign Affairs and Trade
  - iii. Australian Customs and Border Protection Service
  - iv. The Department of the Prime Minister and Cabinet
  - v. Australia's Chief Scientist
  - vi. through the Department of Industry, Innovation, Science, Research and Tertiary Education:
    - i. Commonwealth Scientific and Industrial Research Organisation
    - ii. Australian Research Council
    - iii. Australian Nuclear Science and Technology Organisation
    - iv. Australian Institute of Marine Science
  - vii. through the Department of Health and Ageing:
    - i. National Health and Medical Research Council
    - ii. Public Health Laboratory Network
    - iii. Communicable Disease Network Australia
  - viii. Through the Department of Agriculture, Fisheries and Forestry:
    - i. Australian Bureau of Agricultural and Resource Economics and Sciences

- ii. Grains Research & Development Corporation
  - ix. Office of the Gene Technology Regulator
  - x. Australian Safeguards and Non-Proliferation Office
  - xi. Australian Radiation Protection and Nuclear Safety Agency
  - xii. Australian Security Intelligence Organisation
  - xiii. Geoscience Australia
- (f) email notification to peak industry groups - including:
- i. The Australian Industry Group
  - ii. Australian Industry Defence Network (AIDN)
- (g) email notification to peak university and research groups – including:
- i. Universities Australia
  - ii. Academy of Technological Sciences and Engineering
  - iii. Association of Australian Medical Research Institutes
  - iv. Australian Academy of Science
  - v. Science and Technology Australia
  - vi. Cooperative Research Centres Association
  - vii. Australian Nanotechnology Alliance
  - viii. Australian Information Industry Association
  - ix. AusBiotech
  - x. Royal Australian Chemical Institute
  - xi. Minerals Council of Australia
- (h) email notification to approximately 475 industry members and government representatives who attended the Treaty Roadshow events in December 2010 and August 2011 and people who have registered on the mailing list;
- (i) Defence Materiel Organisation's E-portal banner redirecting industry to the Defence Export Control Office website;
- (j) Defence Materiel Organisation distribution via the Business Access Office network; and
- (k) Defence Export Control Office and US Trade Treaty 1800 numbers for information on the strengthened export controls and Treaty, respectively.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### Defence Trade Controls Regulation 2013

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Defence Trade Controls Regulation 2013

The *Defence Trade Controls Act 2012* (the Act) provides the legislative basis that is required for Australia to implement the *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation* (the Treaty). The Treaty creates a framework for two-way trade in defence articles between ‘trusted communities’ within Australia and the United States of America, without the need for export licences. This will enhance the interoperability between Australia and the US defence forces and provide operational advantages to Australia’s defence industry.

The Act also strengthens Australia’s export controls by aligning domestic export controls with international best-practice and enabling Australia to meet its international obligations as a member of the [Wassenaar Arrangement](#). Specifically, the DTC Act strengthens Australia’s export controls by regulating:

- the supply of (or provision of access to) DSGL technology from Australia to place outside Australia; and
- the brokering of goods or technology listed on the DSGL; and
- the publication of DSGL technology.

The Defence Trade Controls Regulation 2013 (the Regulation) contains provisions in relation to a range of matters that are necessary to give effect to particular provisions of the Act.

#### Human rights implications

The Regulation engages the following human rights:

##### *Right to work*

The right to work is protected by Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The ICESCR affirms the obligation of participating parties to assure individuals their right to freely choose or accept work, including the right not to be deprived of work unfairly. This principle underlines the notion that respect for the individual and his or her dignity is expressed through the freedom of the individual regarding the choice to work, while emphasising the importance of work for personal development as well as for social and economic inclusion.

Under the Act, Australian Community members can be a body corporate who holds an approval under section 27 or employees of a section 27 approval holder who meet the requirements prescribed in section 5 of the Regulation. Employees or contractors of companies that do not meet the requirements of section 5 are unable to access US Defence Articles.

Section 5 of the Regulation prescribes the following requirements for employees and contractors seeking to become an Australian Community member:

- a. be Australian citizens (unless a waiver is obtained); and
- b. hold a current Commonwealth Government security clearance to the level specified in the Regulation.

These restrictions on Australian Community membership may have an impact on the right to work. If an individual is unable to obtain a security clearance to the level required, the individual's ability to obtain employment with an Australian Community member may be affected, however, this should also be limited to circumstances where access to US Defence Articles is required for the position. Should an individual be denied access to US Defence Articles, this person may still be employed by the Australian Community member or the Government of Australia for a position that does not require such access.

Article 4 of ICESCR provides that countries may subject economic, social and cultural rights only to such limitations "as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society". It is necessary to restrict membership of the Australian Community to those individuals that can meet the citizenship and security clearance requirements. Ultimately, these requirements will assist Australia to ensure that only suitable individuals have access to Defence Articles and to reduce the potential risk of diversion of defence goods, technology and related services to countries, organisations or individuals where they might be used in a manner contrary to Australia's international obligations or commitments (including where they might be used to commit human rights abuses).

From a public policy perspective, the benefits of regulating access to Defence Articles outweigh the potential detriment to persons who are unable to meet the citizenship requirements or obtain a security clearance. The impact of the Regulation on the right to work falls within the permissible scope of the ICESCR and is therefore compatible with the international human rights and freedoms recognised by Australia.

## **Conclusion**

The Regulation is compatible with the international human rights conventions to which Australia belongs. While recognising that employment opportunities may be limited for a small group of people, the Regulation is reasonable and necessary and will have a net positive impact on the human rights outlined in the seven human rights treaties.

The enhanced and better-integrated defence export control regime will support Australia's defence, security and international obligations. This will in turn enhance Australia's ability to fulfil its commitment to promote and protect all human rights.

**Stephen Smith MP, Minister for Defence**

## ATTACHMENT

### **Defence Trade Controls Regulation 2013**

Details of the Regulation are as follows:

#### **Part 1 Preliminary**

##### Section 1 – Name of the Regulation

Section 1 states that the name of the Regulation is the *Defence Trade Controls Regulation 2013*.

##### Section 2 – Commencement

Section 2 provides that Parts 1, 3 and 4, Division 2 of Part 6, and Part 8 commence upon the commencement of section 27 of the *Defence Trade Controls Act 2012* (the Act).

On the commencement of section 10 of the Act, sections 6 and 7 of the Regulation commence.

On the commencement of section 11 of the Act, section 8 and Division 1 of Part 6 commence.

##### Section 3 – Authority

Section 3 provides that the *Defence Trade Controls Act 2012* authorises the making of the Regulation.

##### Section 4 – Definitions

Section 4 provides the definition of specific terms in the Regulation.

##### Section 5 - Australian Community member requirements

A body corporate may be approved as a member of the Australian Community under section 27 of the Act. Section 5 of the Regulation sets out the requirements that a person employed by, or contracted to, a section 27 Australian Community member, must satisfy to be considered an Australian Community member for the purposes of accessing US Defence Articles under the Treaty.

Subsection 5(1) sets out the requirements that a person must satisfy as referred to in subparagraph (c)(ii) of the definition of Australian Community member in the Act.

Subsection 5(2) sets out the first requirement, being that a person must be an Australian citizen. Subsection 5(3) provides that the citizenship requirement can be waived if agreed to by both the Australian Government and the Government of the United States of America. For example, where a section 27 Australian Community member has a permanent employee or a contractor engaged for a substantial period of time, who is not an Australian citizen, but he or she needs to access US Defence Articles, the section 27 Australian Community member may seek to have the citizenship requirement waived. A waiver can be agreed upon between the Australian Government and Government of the United States.



The second requirement in subsection 5(4) is that the person must hold a current security clearance issued by the Commonwealth Government on or after 1 October 2010, or issued by the Commonwealth Government before 1 October 2010 at a level other than ‘restricted’. The security clearance must be current.

## **Part 2 Dealings in items on the Defence and Strategic Goods List**

### **Section 6 – Exception to offence – licence or permission**

Section 6 sets out the circumstances in which the offence in subsection 10(1) of the Act does not apply.

Section 6 provides that subsection 10(1) of the Act does not apply in circumstances where:

- a person supplies DSGL technology in the circumstances mentioned in subsection 10(1) of the Act; and
- the person holds a valid licence or permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*; and
- the licence or permission allows the supply in those circumstances; and
- the person complies with the licence or permission.

This exception applies in circumstances where a person located in Australia is supplying DSGL technology to a person outside Australia and the supplier holds a valid permission or licence under regulation 13E for the supply. The exception only applies if in supplying the DSGL technology, the person complies with the requirements of the licence or permit.

This exception will apply to tangible supplies of DSGL technology (e.g. on a compact disc or computer) as permitted under section 13E of the *Customs (Prohibited Exports) Regulations 1958* can only be issued for tangible exports.

### **Section 7 – Exception to offence – Australian Defence Article**

Section 7 sets out circumstances in which the offence in subsection 10(1) of the Act does not apply. The section provides an exception to the offence of supplying DSGL technology for Australian and United States Community members where those members are supplying technology related to Australian Defence Articles and the supply is within the scope of the Treaty. An ***Australian Defence Article*** is defined in Section 4 of the Regulation.

### **Section 8 – Issue of permits – criteria to which the Minister must have regard**

Section 8 sets out the criteria to which the Minister must have regard when assessing whether to grant a permit for the supply of DSGL technology or a permit to arrange for the supply of DSGL technology, under subsections 11(4) and 16(4) of the Act respectively. These criteria are consistent with the considerations made in assessing

an application for the export of DSSL tangible goods or technology under the *Customs (Prohibited Export) Regulations 1958*.

### **Part 3 Defense Trade Cooperation Treaty**

#### **Division 1 Approval conditions – US Defence Articles**

This Division sets out the conditions to which an approval given under section 27 of the Act is subject.

##### **Section 9 – Approval conditions – access to US Defence Articles**

Section 9 requires that section 27 approval holders ensure that access to US Defence Articles is limited to only those employees and contractors who have met the requirements of section 5 of the Regulation and have become Australian Community members. Further, a section 27 approval holder must require such employees and contractors to comply with all conditions to which the approval is subject.

##### **Section 10 – Approval conditions – loss, theft or destruction of US Defence Articles**

Section 10(2) requires an approval holder under section 27 of the Act to notify the Secretary of Defence if an Article 3(1) or 3(3) US Defence Article is lost, stolen or destroyed while in the possession, custody or control of the approval holder. Notification to the Secretary of Defence must be made within 48 hours of the approval holder identifying the loss, theft or destruction.

Subsection 10(3) sets out the information that the approval holder must include in the notification to the Secretary.

This condition will assist in affording the appropriate protections to US Defence Articles and/or related technology being transferred between Australian and United States Community members.

##### **Section 11 – Approval conditions – marking of US Defence Articles or technology**

Sections 11, 12 and 13 set out the conditions that an approval holder must comply with under paragraph 28(1)(e) of the Act in relation to the marking of Article 3(1) or 3(3) US Defence Articles in the approval holder's possession, custody or control. These markings will identify goods, technology and services as coming within the scope of the Treaty and will assist to facilitate their movement between Treaty members without export permits and licences.

Subsections 11(2) to (5) set out the requirements for the marking of goods. Subsections 11(6) to (10) set out the requirements for the marking of technology.

Where it is not practicable to mark a particular US Defence Article, or each individual item of technology, there must be accompanying documentation that includes the marking; and that marking must be clearly visible in the documentation.

### Section 12 – Approval conditions – marking for defence services relating to US Defence Article

Section 12 sets out the requirements that an approval holder must comply with for the marking of defence services provided in relation to a US Defence Article.

Subsections 12(2) and (3) require that an approval holder must ensure that a US Defence Article is marked in accordance with the appropriate prescribed marking.

Subsection 12(4) requires an approval holder to notify the Secretary if the approval holder reasonably believes that an Article is incorrectly marked and to correct, or obliterate and replace, the marking.

Subsection 12(5) requires an approval holder, if providing a defence service orally, to tell the recipients, at the time of providing the service, what marking has been given to the US Defence Article.

### Section 13 – Approval conditions – marking for defence services relating to technology

Section 13 sets out the requirements that an approval holder must comply with for the marking of defence services provided in relation to technology.

Subsections 13(2) and (3) require that an approval holder must ensure that the documentation accompanying defence services identifies the marking of the technology by including the appropriate prescribed marking.

Subsection 13(4) requires an approval holder to notify the Secretary if the approval holder reasonably believes that the documentation includes a marking for the technology which is incorrect. The approval holder must also correct, or obliterate and replace, the marking.

Where an approval holder provides defence services orally, subsection 13(5) requires the approval holder to tell the recipient of the services at the time of providing the services, the marking assigned to the goods and technology.

## **Division 2 – Approval conditions – Australian Defence Articles**

### Section 14 – Approval conditions for dealing with Australian Defence Articles

Section 14 states that Division 2 sets out the conditions that an approval holder must comply with, in accordance with subsection 28(1)(h) of the Act.

### Section 15 – Approval conditions – marking of Australian Defence Articles or technology

Section 15 sets out the requirements for marking Australian Defence Articles when in the possession, custody or control of the holder of an approval under section 27 of the Act.

Subsections 15(2) and (3) set out the requirements for the marking of Australian Defence Articles. Subsections 15(4) to (7) set out the requirements for the marking of technology relating to an Australian Defence Article.

Subsections 15(3) and 15(6) allow the marking to be applied to accompanying documentation if marking the Australian Defence Article or item of technology itself is impractical.

### Section 16 – Approval conditions – marking for defence services relating to Australian Defence Articles

Section 16 sets out the requirements that an approval holder must comply with for the marking for defence services relating to Australian Defence Articles.

Subsections 16(2) and (3) require that an approval holder must ensure the Australian Defence Article is marked with the appropriate prescribed marking.

Where an approval holder provides defence services orally, subsection 16(4) requires the approval holder to tell the recipient of the services at the time of providing the services, the marking assigned to the Australian Defence Article

### Section 17 - Approval conditions – marking for defence services relating to technology

Section 17 sets out the requirements that an approval holder must comply with for the marking of defence services provided in relation to technology relating to an Australian Defence Article.

Subsections 17(2) and (3) require that an approval holder must ensure that documentation accompanying the defence services identifies the service as an Australian Defence Article by including the appropriate prescribed marking.

Where an approval holder provides defence services orally, subsection 17(4) requires the approval holder to tell the recipient of the services, at the time of providing the services, the marking assigned to the technology relating to the Australian Defence Article.

## **Division 3 Approval condition – annual compliance report**

### Section 18 – Annual compliance report

Section 18 provides that a section 27 approval holder must report to the Minister each year on the approval holder's compliance with all approval conditions and the provisions of the Act and the Regulation.

The report must be made within 30 days after the end of each financial year and must be made in the form approved by the Secretary.

## **Division 4 Exceptions to treaty offences**

### **Subdivision A Exceptions to main offence**

#### Section 19 – Supply of goods, technology relating to goods or defence services

Section 19 sets out the circumstances in which the main Treaty offences in subsections 31(1) to (6) of the Act will not apply.

Subsection 19(2) establishes that the section 31 offences in the Act will not apply in circumstances where an Australian Community member supplies goods, technology or defence services and the Australian Community member holds a valid licence or other authorisation granted by the Government of the United States of America that permits the supply in the relevant circumstances.

Subsection 19(3) provides that the offence in subsection 31(3) will not apply where an Australian Community member:

- supplies goods or technology to an intermediate consignee; and
- the intermediate consignee is approved by the Minister under Subdivision B; and
- the intermediate consignee is engaged by the Australian Community member to receive the US Defence Article for the purpose only of transporting the US Defence Articles to either the Commonwealth, another Australian Community member, an Australian Community facility or a member of the United States Community.

This exception recognises that approved intermediate consignees are required to move goods or technologies between members of the Australian and US communities.

### **Subdivision B Approval of intermediate consignees**

#### Section 20 – Application for approval

This section establishes the process for a person to apply to the Minister for Defence for approval as an intermediate consignee.

*Intermediate consignee* is defined in section 4 of the Regulation and means an entity that is:

- a freight forwarder; or
- a customs broker; or
- a commercial air, land or sea freight carrier or transport provider;

and includes an entity that acts in that capacity as the agent of another entity.

An application for approval as an intermediate consignee must:

- be in the approved form;
- contain the information required by the form; and
- be accompanied by the required documents, if any.

Subsection 20(3) lists the matters that the Minister must have regard to in deciding whether to approve a person as an intermediate consignee, which include that the primary business of the person is an intermediate consignee and that the person has a tracking system in place which satisfies the requirements set out in subsection 20(4).

Subsection 20(5) provides that a person must not be approved by the Minister as an intermediate consignee unless the Government of the United States has agreed in writing to the approval being given.

The Minister must notify a person in writing of a decision on an application for approval as an intermediate consignee in accordance with subsection 20(6).

Subsection 20(7) provides that an approval is subject to the condition that the person's tracking system continues to meet the requirements of subsection 20(4) and any other conditions that are included in the approval.

### Section 21 – Cancellation of approval

Section 21 sets out the circumstances in which the Minister may, by writing, cancel a person's approval. If the Minister cancels an approval, the Minister must under subsection 21(2) give the person notice of the cancellation and the reasons for the cancellation. Under subsection 21(3) the cancellation will take effect at the time the intermediate consignee receives the notice.

### Section 22 – Review of decisions

Subsection 22(1) sets out the circumstances in which a person may in writing request the Minister to review a decision to not approve a person as an intermediate consignee or to cancel an approval. Under subsection 22(2), the request must be made within 30 days after the person is notified of the decision. Under subsection 22(3), the request must set out the reasons for requesting the review.

Under subsections 22(4), the Minister must review the decision personally and as soon as practical after receiving the request. The Minister may affirm, vary, or revoke the decision and if revoked, make such other decision as the Minister thinks appropriate under subsections 22(5).

Under subsection 22(6), the Minister must notify the person in writing within 30 days of receiving the request to review of the decision made under subsection 22(5), the reasons for that decision, and if the reasons cannot be disclosed the fact that the reasons cannot be disclosed and the person's right to have the decision reviewed by the Administrative Appeals Tribunal.

Under subsection 22(7), the Minister is taken to have affirmed the decision mentioned in subsection 22(4) if the person does not receive notice of the Minister's decision on the review with 90 days after the request for review.

Under subsection 22(8), the person may apply to the Administrative Appeals Tribunal for a review of the decision made under subsection 22(5) or a decision made personally by the Minister under subsection 20(6) or subsection 21(1).

## **Part 4 Monitoring Powers**

### **Section 23 – Identity cards**

This section sets out the information that must be contained in identity cards issued by the Secretary to authorised officers performing monitoring functions under Part 4 of the Act.

## **Part 6 Record-keeping**

### **Division 1 Permit holders under Part 2 of the Act**

This Division sets out the information that permit holders and registered brokers must include in the records that they are required to keep as outlined in the Division. The sections in this division do not prescribe the form that the records must take but rather the information the records must include.

### **Section 24 – Section 11 permit holders – information to be included in records**

For subsection 58(4) of the Act, section 24 sets out the information to be included in records kept by permit holders for supplies of technology permitted under section 11 of the Act.

Provided that all of the relevant information is captured in accordance with this provision, it is possible for permit holders to be able to make a single record that covers a number of supplies over a period of time where a broad permit has been given under s11 for multiple supplies.

### **Section 25 – Registered brokers – information to be included in records**

For subsection 58(4) of the Act, section 25 sets out the information that must be included in records kept by permit holders for brokering activities permitted under section 16 of the Act.

Provided that all of the relevant information is captured in accordance with this provision, it is possible for permit holders to be able to make a single record that covers a number of brokering arrangements over a period of time where a broad permit has been given under s16 authorising multiple arrangements.

## **Division 2 Approval-holders under section 27 of the Act**

This Division sets out the information that section 27 approval holders under the Act must include in the records that they are required to keep. The sections in this Division do not prescribe the form that a record must take but rather the information the record must include.

### **Section 26 – Activities for which records must be kept**

For subsection 58(3) of the Act, section 26 sets out the activities done by the holder of an approval under section 27 of the Act for which records must be kept under that subsection.

### **Section 27 – Information to be included in records**

Section 27 sets out in table form the information that must be contained in a record for an activity mentioned in the table in section 26.

## **Part 8 Other matters**

### **Division 1 Notices, permits or approvals**

#### **Section 28 – Notices, permits or approvals – service and receipt**

This section prescribes the methods by which a notice, permit or approval required or permitted by the Act may be given to a person and the time at which the person is taken to have received a notice, permit or approval.

Subsection 28(2) provides that a notice, permit or approval may be given to the person at the last address notified to the Minister for the purpose of receiving notices, either by giving the notice to the person or to a person who appears to work at that address in a management or executive position. The person is taken to have received the notice, permit or approval under subsection (2) at the time at which it is given to the person, in accordance with subsection 28(3).

Subsection 28(4) provides that a notice, permit or approval may be posted to the person at the postal address last notified to the Minister for the purposes of receiving notices, permits and approvals. Under subsection 28(5) the person will be taken to have received the notice 21 days after the date on the notice at the place to which it was sent. Where the notice is posted from a place in Australia, to an address in Australia the notice is taken to be received at the place 7 business days after the date of the notice.

Subsection 28(6) provides that where a person has notified the Minister of a fax number, e-mail address or other electronic address for the purposes of receiving a notice, permit or approval, the notice, permit or approval may be:

- faxed to the person at the fax number last notified to the Minister;
- sent to the person at the e-mail address last notified to the Minister; or



- sent to the person by other electronic means to the electronic address last notified to the Minister.

The person is taken to have received the notice sent under subsection 28(6) at the end of the day that it was sent or at the end of the next following business day (where the day it was sent is not a business day), in accordance with subsection 28(7).

## **Division 2 Forfeiture**

### **Section 29 – Storage of seized goods etc.**

This section sets out the manner in which seized goods, technology or things must be stored for the purposes of section 71(7) of the Act.

Subsection 29(1) provides that the seized goods must be stored securely at a place approved by the Minister, in writing, for that purpose.

In approving a place for the storage of a kind of goods, technology or thing the Minister must under subsection 29(2) consider the nature of the items of that kind; the suitability of that place for storing securely the items of that kind; and the need to preserve the condition and value of the items as far as is practicable.

### **Section 30 – Destruction of condemned goods etc.**

Section 30 provides that for the purpose of section 71(8) of the Act, if the Minister is satisfied that condemned goods, technology or things can safely be destroyed then the items must be destroyed at a place, and in a manner, suitable for safely destroying goods, technology or things of that kind.

Subsection 30(1) does not apply where the Minister has given an approval to sell the goods and the goods are sold in accordance with the approval.

In determining a suitable place and way for safely destroying the goods, technology or things the Minister must have regard to the matters listed in subsection 30(3).

### **Section 31 – Dealing with condemned goods etc.**

Subsection 31(1) provides that the Minister may give a person mentioned in paragraph 71(3)(a), (b) or (c) of the Act written approval to sell condemned goods, technology or things (if the items are not illegal to sell or are required to be destroyed under another Commonwealth or State or Territory law).

A person holding an approval to sell the goods, technology or things must under subsection 31(3) offer the items for sale at the best reasonably achievable price; and if the items are sold, pay the proceeds to the Commonwealth.

Subsection 31(4) requires that the items must not be transferred to a buyer until the buyer agrees, in writing to use the goods, or cause or allow the goods to be used, only for a lawful purpose.

Section 32 – Storage of condemned goods etc.

Section 32 provides that condemned goods, technology or things that are to be destroyed or otherwise dealt with, must be stored securely as if they were seized items to which section 29 applies.