

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 90**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs (Prohibited Exports) Amendment (Defence Trade Controls) Regulation 2013*

Subsection 270(1) of the Customs Act 1901 (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to Customs.

The purpose of the Regulation is to amend the *Customs (Prohibited Exports) Regulations 1958* (the Exports Regulations) to exempt goods that are the subject of the *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation* (the Treaty) from the export controls set out in regulation 13E of the Exports Regulations.

Regulation 13E prohibits the exportation from Australia of goods on the 'Defence and Strategic Goods List' (the DSGL) unless a licence or permission has been granted by the Minister for Defence or an authorised person. The DSGL is made by the Minister for Defence and sets out military goods and dual-use goods. This prohibition gives effect to Australia's obligations under several international agreements, including the Wassenaar Arrangement, the Missile Technology Control Regime, the Australia Group, the Nuclear Suppliers Group, the Chemical Weapons Convention and the Biological and Toxic Weapons Convention.

Part 2 of the *Defence Trade Controls Act 2012* (the DTC Act) implements the Treaty. The Treaty provides for trade in defence articles (goods or technology that are designed or adapted for military purposes) between the United States (US) and Australia. In order for trade to occur in accordance with the Treaty, individuals and companies need to be approved as members of either the US or Australian 'trusted community'. Section 4 of the DTC Act makes provision for individuals and companies to become members of the 'Australian Community'. Members of the Australian Community are able to trade certain defence articles with US community members and other Australian Community members. The Treaty creates a framework for this trade to occur without the need for export licences.

The defence articles to which the Treaty and the DTC Act apply are 'US Defence Articles' (as defined in section 5 of the DTC Act) and 'Australian Defence Articles' (as defined in section 4 of the *Defence Trade Controls Regulation 2013*).

Several of the defence articles that are covered by the definitions of 'US Defence Articles' and 'Australian Defence Articles' are also on the DSGL. Therefore, in order to give effect to the terms of the Treaty, it is necessary to amend regulation 13E of the

Exports Regulations to exempt such goods from the export controls set out in regulation 13E.

The Regulation amends regulation 13E to exempt US Defence Articles that are defined in section 5 of the DTC Act and Australian Defence Articles that are defined in section 4 of the *Defence Trade Controls Regulation 2013* where the goods are exported from Australia by an Australian Community Member from the prohibition on exportation. In addition, the Regulation specifies that the goods must be exported for one or more the activities mentioned in paragraphs (a) to (d) of Article 3(1) of the Treaty. These activities include:

- (a) combined military or counter-terrorism operations between the US and Australia;
- (b) US and Australian cooperative security and defence research, development, production and support programs;
- (c) Specifically determined security and defence projects where the Australian Government is the end-user; and
- (d) US government end use.

If the exportation of the goods is not for one or more of these purposes, the exportation will be governed by regulation 13E of the Exports Regulations.

There was extensive consultation with defence industry, the research and university sectors and Commonwealth Departments (including the Attorney-General's Department, the Department of Foreign Affairs and Trade, Australian Customs and Border Protection Service and Department of Industry, Innovation, Science, Research and Tertiary Education) in the preparation of the Defence Trade Controls Bill 2012 (the Bill). The Bill was also the subject of an inquiry by the Senate Standing Committee on Foreign Affairs, Defence and Trade. The commencement of the provisions of the *Defence Trade Controls Act 2012* and the associated amendments to the Exports Regulations are widely anticipated by defence industry in Australia.

The Regulation commences on the commencement of section 27 of the DTC Act on 6 June 2013.

## Statement of Compatibility with Human Rights

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

### *Customs (Prohibited Exports) Amendment (Defence Trade Controls) Regulation 2013*

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

#### *Overview of the Regulation*

The purpose of the Regulation is to amend the *Customs (Prohibited Exports) Regulations 1958* (the Exports Regulations) to exempt goods that are the subject of the *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation* (the Treaty) from the export controls set out in regulation 13E of the Exports Regulations.

Part 2 of the *Defence Trade Controls Act 2012* (the DTC Act) implements 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 commencement of Part 2 of the DTC and this amending Regulation will enable these trade activities to commence in relation to the Treaty.

The Regulation commences on the commencement of section 27 of the DTC Act on 6 June 2013.

#### *Human Rights implications*

This legislative instrument does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### *Conclusion*

This legislative instrument does not raise any human rights issues.

**Minister for Home Affairs**