

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

Export Control (Orders) Regulations 1982

Export Control Legislation Amendment (Timor Sea Maritime Boundaries Treaty) Order 2019

Legislative Authority

The *Export Control Act 1982* (the Act) provides for the control of the export of certain goods and for related purposes.

Section 25 of the Act relevantly provides that the Governor General may make regulations empowering the Minister to make orders, not inconsistent with the regulations. Regulation 3 of the *Export Control (Orders) Regulations 1982* (the Orders Regulations) provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act.

Purpose

The purpose of the *Export Control Legislation Amendment (Timor Sea Maritime Boundaries Treaty) Order 2019* is to amend the:

- *Export Control (Eggs and Egg Products) Orders 2005*
- *Export Control (Fish and Fish Products) Orders 2005*
- *Export Control (Meat and Meat Products) Orders 2005*
- *Export Control (Milk and Milk Products) Orders 2005*
- *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010*
- *Export Control (Prescribed Goods—General) Order 2005*; and
- *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*

to implement *The Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea* (New York, 6 March 2018) [2018] ATNIF 4 (the Treaty).

The Treaty establishes permanent maritime boundaries between Australia and Timor-Leste, and a regulatory framework for petroleum and resource development in the Timor Sea. When the Treaty enters into force, it will supersede and replace the provisional arrangements (contained in the previous agreements). The Order amends the above legislative instruments to reflect the new permanent boundaries agreed in the Treaty (including the fact that certain areas will transition from Australian or shared jurisdiction to exclusive Timorese jurisdiction).

Background

The Department of Agriculture monitors operational policy and systems to ensure compliance with Australian export controls and any additional importing country requirements. This is achieved by undertaking inspection, audit and certification services.

These services maintain the eligibility of commodities for export from Australia and ensure that market access is maintained. The department also issues permits, health certification and other documentation necessary to confirm compliance for importing countries.

The export of certain goods is regulated under the Act and the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act). These Acts and other supporting legislation and delegated legislation provide the basis for ensuring that exports such as meat, seafood, dairy, plants, non-prescribed goods and live animals meet the requirements of importing countries.

This export control legislative framework contains a number of provisions that set out when the relevant export controls do not apply. The amending Order updates these exemptions to reflect the coming into force of the Treaty. These amendments ensure that movements to the new Treaty area are not required to be managed as exports from Australia.

Impact and Effect

The amendments will insert a new definition of the Timor Sea Maritime Boundaries Treaty into the Orders. They will also amend the exemptions provisions in the Orders to ensure that the new Treaty area remains exempt from the operation of the relevant Export Control Orders.

Consultation

The Department of Industry, Innovation and Science, as the lead department for bringing the Treaty into force, consulted the Attorney-General's Department, Australian Transport Safety Bureau, Department of Agriculture, Department of Communications and the Arts, Department of Foreign Affairs and Trade and Department of Home Affairs. All agencies support the proposed Treaty.

As these are technical amendments to clarify existing provisions, and do not substantively alter the intent or scope of the existing Orders, additional consultation has not been undertaken on the amending Order.

Details/ Operation

Details of the Order are set out in [Attachment A](#).

Other

The Act and the Orders Regulations specify no conditions that need to be satisfied before the power to make the proposed Order may be exercised.

The Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

The Order is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Export Control Legislation Amendment (Timor Sea Maritime Boundaries Treaty) Order 2019

Section 1 – Name

This section provides that the name of the Order is the *Export Control Legislation Amendment (Timor Sea Maritime Boundaries Treaty) Order 2019*.

Section 2 – Commencement

This section provides for the Order to commence at the same time as Schedule 1 to the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019* commences.

Section 3 – Authority

This section provides that the Order is made under the *Export Control (Orders) Regulations 1982*.

Section 4 – Schedules

This section provides a machinery clause that enables the Schedule to the Order to operate according to its terms. Each instrument that is specified in a Schedule to the Order is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Order has effect according to its terms.

Schedule 1 – Amendments

Item 1 repeals the definition of **installed** at Order 7 of the *Export Control (Eggs and Egg Products) Orders 2005*, and substitutes a new definition to determine whether a resources industry fixed structure or resources industry mobile unit is installed in an area.

Item 2 repeals the definition of **Joint Petroleum Development Area** at Order 7 of the *Export Control (Eggs and Egg Products) Orders 2005* which currently refers to the Petroleum (*Timor Sea Treaty*) Act 2003 (PTST Act). The Joint Petroleum Development Area will be redundant when the Treaty enters into force, and the PTST Act will also be repealed.

Item 3 corrects a typographical error in paragraph (a) of the definition of **resources industry structure** at Order 7 of the *Export Control (Eggs and Egg Products) Orders 2005*.

Item 4 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Order 7 of the *Export Control (Eggs and Egg Products) Orders 2005* to provide that it means the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force from time to time.

Item 5 corrects a typographical error in paragraph 23.1(e) of the *Export Control (Eggs and Egg Products) Orders 2005*.

Item 6 repeals paragraph 23.1(f) of the *Export Control (Eggs and Egg Products) Orders 2005*, and inserts a new paragraph 23.1(f) to omit references to “**Joint Petroleum Development Area**” and instead include references to resource industry structures or resource industry mobile units that are installed within areas that are either referenced or established by the Treaty.

Item 7 omits the existing references to “**Joint Petroleum Development Area and resources industry structure**” from the note to Suborder 23.1 of the *Export Control (Eggs and Egg Products) Orders 2005* because that area will cease to exist upon entry into force of the Treaty, and substitutes references to “**resources industry structure and Timor Sea Maritime Boundaries Treaty**”.

Item 8 corrects a typographical error in Suborder 23.2 of the *Export Control (Eggs and Egg Products) Orders 2005*. This correction will not alter the effect of the provision.

Item 9 repeals the definition of **installed** at Order 8 of the *Export Control (Fish and Fish Products) Orders 2005*, and substitutes a new definition for the reasons outlined in Item 1.

Item 10 repeals the definition of **Joint Petroleum Development Area** at Order 8 of the *Export Control (Fish and Fish Products) Orders 2005* for the reasons outlined in Item 2.

Item 11 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Order 8 of the *Export Control (Fish and Fish Products) Orders 2005* for the reasons outlined in Item 4.

Item 12 corrects a typographical error in paragraph 25.1(e) of the *Export Control (Fish and Fish Products) Orders 2005*.

Item 13 repeals paragraph 25.1(f) of the *Export Control (Fish and Fish Products) Orders 2005*, and inserts a new paragraph 25.1(f) for the reasons outlined in Item 6.

Item 14 omits the existing references to “**Joint Petroleum Development Area and resources industry structure**” from the note to Suborder 25.1 of the *Export Control (Fish and Fish Products) Orders 2005*, because that area will cease to exist upon entry into force of the Treaty, and substitutes references to “**resources industry structure and Timor Sea Maritime Boundaries Treaty**”.

Item 15 corrects a typographical error in Suborder 25.2 of the *Export Control (Fish and Fish Products) Orders 2005*. This correction will not alter the effect of the provision.

Item 16 repeals the definition of **installed** at Suborder 8.1 of the *Export Control (Meat and Meat Products) Orders 2005*, and substitutes a new definition for the reasons outlined in Item 1.

Item 17 repeals the definition of **Joint Petroleum Development Area** at Suborder 8.1 of the *Export Control (Meat and Meat Products) Orders 2005* for the reasons outlined in Item 2.

Item 18 corrects a typographical error in paragraphs (a) and (b) of the definition of **resource industry structure** at Suborder 8.1 of the *Export Control (Meat and Meat Products) Orders 2005*.

Item 19 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Suborder 8.1 of the *Export Control (Meat and Meat Products) Orders 2005* for the reasons outlined in Item 4.

Item 20 repeals paragraph 23.1(e) of the *Export Control (Meat and Meat Products) Orders 2005*, and inserts a new paragraph 23.1(e) for the reasons outlined in Item 6.

Item 21 omits the existing references to “**Joint Petroleum Development Area and resources industry structure**” from the note to Suborder 23.1 of the *Export Control (Meat and Meat Products) Orders 2005*, because that area will cease to exist upon entry into force of the Treaty, and substitutes references to “**resources industry structure and Timor Sea Maritime Boundaries Treaty**”.

Item 22 corrects a typographical error in Suborder 23.2 of the *Export Control (Meat and Meat Products) Orders 2005*. This correction will not alter the effect of the provision.

Item 23 repeals the definition of **installed** at Order 7 of the *Export Control (Milk and Milk Products) Orders 2005*, and substitutes a new definition for the reasons outlined in Item 1.

Item 24 repeals the definition of **Joint Petroleum Development Area** at Order 7 of the *Export Control (Milk and Milk Products) Orders 2005* for the reasons outlined in Item 2.

Item 25 corrects a typographical error in paragraph (a) of the definition of **resources industry structure** at Order 7 of the *Export Control (Milk and Milk Products) Orders 2005*.

Item 26 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Order 7 of the *Export Control (Milk and Milk Products) Orders 2005* for the reasons outlined in Item 4.

Item 27 corrects a typographical error in paragraph 23.1(e) of the *Export Control (Milk and Milk Products) Orders 2005*.

Item 28 repeals paragraph 23.1(f) of the *Export Control (Milk and Milk Products) Orders 2005*, and inserts a new paragraph 23.1(f) for the reasons outlined in Item 6.

Item 29 omits the existing references to “**Joint Petroleum Development Area and resources industry structure**” from the note to Suborder 23.1 of the *Export Control (Milk and Milk Products) Orders 2005*, because that area will cease to exist upon entry into force of the Treaty, and substitutes references to “**resources industry structure and Timor Sea Maritime Boundaries Treaty**”.

Item 30 corrects a typographical error in Suborder 23.2 of the *Export Control (Milk and Milk Products) Orders 2005*. This correction will not alter the effect of the provision.

Item 31 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Suborder 1.09(1) of the *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010* for the reasons outlined in Item 4.

Item 32 corrects a typographical error in Suborder 2.10(1) of the *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010*.

Item 33 repeals Suborder 2.10(2) of the *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010* and substitutes a new subsection for the reasons outlined in Item 1.

Item 34 corrects a typographical error in Suborder 2.10(3) of the *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010*. This correction will not alter the effect of the provision.

Item 35 repeals paragraph 2.10(4)(c) of the *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010*, and inserts a new paragraph 2.10(4)(c) for the reasons outlined in Item 6.

Item 36 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Subsection 1.05(1) of the *Export Control (Prescribed Goods—General) Order 2005* for the reasons outlined in Item 4.

Item 37 corrects a typographical error in Subsection 2.01(1) of the *Export Control (Prescribed Goods—General) Order 2005*.

Item 38 repeals Subsection 2.01(2) of the *Export Control (Prescribed Goods—General) Order 2005* and substitutes a new subsection for the reasons outlined in Item 1.

Item 39 corrects a typographical error in Subsection 2.01(3) of the *Export Control (Prescribed Goods—General) Order 2005*. This correction will not alter the effect of the provision.

Item 40 repeals paragraph 2.01(4)(f) of the *Export Control (Prescribed Goods—General) Order 2005*, and inserts a new paragraph 2.01(4)(f) for the reasons outlined in Item 6.

Item 41 inserts a definition of **Timor Sea Maritime Boundaries Treaty** at Suborder 1.10(1) of the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010* for the reasons outlined in Item 4.

Item 42 corrects a typographical error in Suborder 2.10(1) of the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*.

Item 43 repeals Suborder 2.10(2) of the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010* and substitutes a new suborder for the reasons outlined in Item 1.

Item 44 corrects a typographical error in Suborder 2.10(3) of the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*. This correction will not alter the effect of the provision.

Item 45 repeals paragraph 2.10(4)(e) of the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*, and inserts a new paragraph 2.10(4)(e) for the reasons outlined in Item 6.

Statement of Compatibility with Human Rights

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

***Export Control Legislation Amendment
(Timor Sea Maritime Boundaries Treaty) Order 2019***

This Legislative Instrument 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 Legislative Instrument

The amendments will insert a new definition of the Timor Sea Maritime Boundaries Treaty into the Orders. They will also amend the exemptions provisions in the Orders to ensure that the new Treaty area remains exempt from the operation of the relevant Export Control Orders.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Bridget McKenzie
Minister for Agriculture**