

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 4

Issued by the Authority of the Minister for Justice and Customs
Customs Act 1901
Customs (Prohibited Exports) Amendment Regulations 2007 (No. 1)

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 for giving effect to the Act.

Section 112 of the Act provides in part that the Governor-General may, by regulation, prohibit the exportation of goods from Australia and that the power may be exercised by prohibiting the exportation of goods absolutely or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

Paragraph 112(2A)(aa) of the Act further provides that the regulations may identify the goods to which the regulations relate by reference to their inclusion in a list or other document:

- formulated by a Minister and published in the *Gazette* or otherwise; or
- as amended by the Minister and in force from time to time.

The purpose of the amending Regulations is to amend the *Customs (Prohibited Exports) Regulations 1958* (the Principal Regulations) to implement sanctions against Iran imposed by United Nations Security Council Resolution 1737 (2006) which was adopted on 23 December 2006 (the Resolution).

The Resolution provides, in part, that all Member States shall prevent the supply, sale or transfer to, or for the benefit of, Iran of all items which could contribute to Iran's nuclear enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems. These items include particular items listed in Security Council documents S/2006/814 and S/2006/815, which relate to nuclear programmes and ballistic missile programmes, respectively.

The sanctions also extend to items determined as necessary by the Security Council or the Committee of the Security Council established under the Resolution, which could contribute to nuclear enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems.

The exportation of all items listed in Security Council documents S/2006/814 and S/2006/815 is already controlled under regulation 13E of the Principal Regulations. Therefore, amendments to the Principal Regulations only need to cover additional goods that are

determined by the Security Council or the Committee of the Security Council under the Resolution.

These goods, if any, will be identified by the Department of Foreign Affairs and Trade and included in a list determined by the Foreign Minister under regulation 18 of the *Charter of the United Nations (Sanctions – Iran) Regulations 2007*.

The amending Regulations inserts new regulation 13CQ into the Principal Regulations to prohibit the exportation of such listed goods the immediate or final destination of which is, or is intended to be, Iran unless the written permission of the Foreign Minister or an authorised person is shown to a Collector at or before the time of exportation.

The Foreign Minister may authorise an officer of the Department of Foreign Affairs and Trade to be an authorised person for the purposes of the proposed Regulations.

The Foreign Minister or an authorised person may also include conditions and other requirements in a permission and the Foreign Minister may revoke or modify a permission in certain circumstances.

The Foreign Minister or an authorised person, in deciding whether to grant a permission to export must take into account Australia's relations with other countries and Australia's obligations under international law.

No consultation was undertaken specifically in relation to either of the amendments as they implement Australia's international obligations under the Resolution.

The amending Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

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