

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 292

Issued by the Authority of the Minister for Justice and Customs

Customs Act 1901

Customs (Prohibited Exports) Amendment Regulations 2007 (No. 3)

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.

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. The *Customs (Prohibited Exports) Regulations 1958* (the Principal Regulations) control the exportation of the goods specified.

The purpose of the Regulations is to clarify the export restrictions on source materials, and to include an additional exemption from these export restrictions. ‘Source materials’ is a term used in the context of safeguards to mean any material from which special fissionable material may be produced, including natural uranium, depleted uranium and thorium.

Regulation 9 of the Principal Regulations prohibits the exportation from Australia of goods specified in Schedule 7 without the permission of the Minister for Industry, Tourism and Resources or an authorised person. Nuclear materials, including source materials, are specified in Schedule 7. In particular, paragraphs (a) to (d) of item 1 specify the source materials that are subject to the export controls in regulation 9, and paragraphs (e) and (f) of item 1 specify the exemptions from the export controls.

Paragraphs (a) to (c) of item 1 specify uranium and thorium. Paragraph (d) specifies “any of the materials mentioned in paragraphs (a), (b) and (c) in the form or metal, alloy, chemical compound, ore or concentrate, including monazite”. At the time that paragraph (d) was originally inserted into item 1, monazite was specifically referred to as it was an ore or concentrate of uranium or thorium of particular interest. While any ore or concentrate of uranium or thorium is covered by paragraph (d), new paragraph (d) includes specific references to two additional ores and concentrates, being tantalum concentrates and tantalum glass, that are of particular interest, in order to provide greater clarity to the exporters of these ores or concentrates.

The Regulations repeal and substitute item 1 of Schedule 7 and new paragraph (d) includes specific references to tantalum concentrates and tantalum glass.

The Regulations also insert a new exemption from regulation 9 into item 1 of Schedule 7. Controlling the exportation of ores and concentrates below a certain, very low, concentration is not necessarily of concern as the likelihood of uranium and/or thorium being extracted during processing in other countries is very low. The Regulations insert a new exemption from item 1 in Schedule 7 in order to simplify the export controls.

New item 1 of Schedule 7 includes in the list of exemptions from item 1 new paragraph (g) which refers to any ore or concentrate containing less than 0.05% by weight of a material mentioned in paragraph (a), (b) or (c) of item 1, or any combination of those materials.

However, new paragraph (g) also includes a power whereby the Minister for Industry, Tourism and Resources can exclude ores and concentrates from this exemption by listing the excluded ores and concentrates in a list or document. The list or document is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. It is possible that, in the future, the exportation of certain ores and concentrates with these low concentrations may need to be controlled. Ores and concentrates that are excluded by the Minister from the exemption in new paragraph (g) would become subject to the export controls in regulation 9.

No consultation was undertaken specifically in relation to the Regulations as they are of a minor or machinery nature and do not substantially alter existing arrangements.

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

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