

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Agriculture, Fisheries and Forestry

*Export Control Act 1982*

*Export Control (Prescribed Goods – General) Amendment Order 2009 (No. 1)*

Section 3 of the *Export Control Act 1982* (the Act) defines ‘prescribed goods’ to mean goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of the Act. Section 7 of the Act provides that the regulations may prohibit the export of prescribed goods from Australia absolutely or to a specified place or unless specified conditions or restrictions are complied with.

Sub-section 25(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or for giving effect to the Act. The matters that the regulations may make provision for include:

- under paragraph 25(2)(f) of the Act, the prescribing penalties not exceeding 50 penalty units for offences against the regulations; and
- under paragraph 25(2)(g) of the Act, subject to sub-section 25(3) of the Act empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

Regulation 3 of the *Export Control (Orders) Regulations 1982* 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.

The purpose of the *Export Control (Prescribed Goods – General) Amendment Order 2009 (No. 1)* (the Amendment Order) is to correct a typographical error in the *Export Control (Prescribed Goods – General) Order 2005* and to remove the reference to ‘de facto spouse’ and replace it with ‘de facto partner (within the meaning of the *Acts Interpretation Act 1901*)’.

A typographical error exists in reference to the *Sea Installations Act 1987*. The Amendment Order would correct this.

The amendment to remove the reference to ‘de facto spouse’ and replace it with ‘de facto partner (within the meaning of the *Acts Interpretation Act 1901*)’ follows on from recent amendments made by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (the ‘Same Sex Relationships Act’). The Same Sex Relationships Act was enacted to give effect to the recommendations of the Human Rights and Equal Opportunity Commission (HREOC) *Same-Sex: Same Entitlements* Report. The Report identified the terms ‘spouse’ and ‘de-facto spouse’ as discriminatory against same-sex couples. The term ‘spouse’ is interpreted as referring to a husband or wife. The term ‘de-facto spouse’ is

interpreted as person who is capable of being a married partner. The terms were considered discriminatory because same-sex couples are not able to marry.

The Same-Sex Relationships Act was given Royal Assent on 19 December 2008 and reforms the general areas of law including tax, social security, health, aged care, veteran's entitlements, employment entitlements and immigration. In addition to reforms to the general areas of law, the Same-Sex Relationships Act introduced the model definition of 'de facto partner' which now applies equally to opposite-sex and same-sex de facto couples. This amendment follows this model definition.

There was no consultation with regard to these amendments as they are minor and machinery in nature. The Office of Best Practice Regulation (OBPR) Preliminary Assessment was completed in relation to both amendments. Both Preliminary Assessments concluded that the amendments were minor and machinery in nature and that further consultation was not required.

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

Details of the Amendment Order are set out below:

### **Order 1**

1. This Order provides that the name of the Amendment Order is the *Export Control (Prescribed Goods – General) Amendment Order 2009 (No. 1)*.

### **Order 2**

2. This Order provides that the Amendment Order commence on the day after it is registered.

### **Order 3**

3. This Order provides that Schedule 1 amends the *Export Control (Prescribed Goods – General) Order 2005*.

### **Schedule 1 Amendments**

Item 1 amends subsection 2.01(2) by omitting '321987' in the reference to the *Sea Installations Act 1987* and inserting '1987'. The amendment corrects a typographical error in the reference to the *Sea Installations Act 1987*.

Item 2 amends paragraph 4.05(3)(b) by substituting 'the spouse or de facto spouse of the person concerned; and' with 'the spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*) of the person concerned; and' in its place.

Paragraph 4.05(1)(g) of the *Export Control (Prescribed Goods – General) Order 2005* provides that the Secretary may, in deciding whether a person is a fit and proper person for the purposes of the Act, the regulations, this Order or another Export Control Order, have regard to whether an associate of a person is not a fit and proper person. Paragraph 4.05(3)(b) states that for the purposes of paragraph 4.05(1)(g) and subsection (2), a reference to an associate of a person includes that person's spouse or de facto spouse.

The amended paragraph is required to recognise same-sex de facto relationships. The amendment is required as a result of new legislation introduced by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008*, which was given Royal Assent on 19 December 2008. This legislation introduced a model definition of 'de facto partner'. This amendment provides that the definition of 'de facto partner' be taken from the model definition now contained in the *Acts Interpretation Act 1901*, which applies equally to same and opposite-sex de facto couples.