

EXPLANATORY STATEMENT

Defence Trade Controls Act 2012

Proclamation

This Proclamation fixes 6 June 2013 as the date on which the provisions in the *Defence Trade Controls Act 2012* relating to the *Treaty between the Government of Australia and the Government of the United States of America concerning Defence Trade Cooperation* (the Treaty) will commence.

Section 2 of the *Defence Trade Controls Act 2012* (the Act) sets out the commencement provisions for the Act. The table in subsection 2(1) provides that sections 1, 2, 74A and 75 commence on Royal Assent. Items 2, 4, 6, 8 and 9 of the table provide that the provisions covered by those items commence on a single day to be fixed by proclamation.

The purpose of this Proclamation is to commence Items 2 and 9 of the table in subsection 2(1) of the Act. The commencement of these provisions will give effect to the Treaty.

Item 11 of the table will commence at the same time as the provisions covered by Item 9, that is, the date of proclamation. The remaining items in the table (Items 3, 5 and 7) will commence the day after the end of the period of two years beginning on the day the Treaty enters into force.

This Proclamation affixes 6 June 2013 as the day on which the following provisions of the Act commence:

- i. Sections 3 to 9 (Item 2) – these sections are the preliminary provisions to the Act dealing with definitions used in the Act and the Act's application.
- ii. Sections 26 to 30 (Item 9) – these sections implement the Treaty and establish the framework for approving membership of the Australian Community.
- iii. Sections 31 and 32 (Item 9) – these sections set out the main offences for enforcing the Treaty obligations under the Act.
- iv. Sections 33 and 34 (Item 9) – these sections set out the circumstance in which the Minister may issue directions to Australia Community members relating to aspects of the operation of the Treaty.
- v. Sections 35 and 36 (Item 9) – these sections cover the transition of goods and technology under the Treaty framework and establishes the Defence Trade Cooperation Munitions List as a mechanism for identifying goods and technology covered by the Treaty.
- vi. Sections 37 to 51 (Item 9) – these sections establish mechanisms for monitoring of the compliance of Australian Community member with their Treaty obligations under the Act.
- vii. Sections 52 to 57 (Item 9) – these sections provide information gathering powers to assist with ensuring compliance with the Act.

Item 11, which will commence with item 9, will cover the following provisions of the Act:

- i. Subsections 58(3) to (8) – these subsections set out the recordkeeping requirements for s27 approval holders under the Act.
- ii. Sections 59 to 62 – these sections provide powers relating to the production of records to assist with ensuring compliance with the Act.
- iii. Sections 63 to 65 – these sections set out the decisions that are reviewable under the Act, and the mechanisms for internal and external review.
- iv. Sections 66 to 72 – these sections provide for various procedural matters such as forms, notices, permits and approvals required under the Act, the requirement to provide reasons for decisions and for injunctions and forfeiture of material supplied or attempted to be supplied in contravention of the Act.
- v. Sections 73 and 74 – these sections provide for delegation of the Minister's and Secretary's powers under the Act.

The commencement date allows for the exchange of notes to bring the Treaty into force and the subsequent gazettal of the day on which the Treaty enters into force as required by Item 2 of the table in Section 2 of the Act.

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 these provisions of the *Defence Trade Controls Act 2012* is widely anticipated by defence industry in Australia.

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

Statement of Compatibility with Human Rights

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

Defence Trade Controls Commencement Proclamation 2013

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

This instrument proclaims the commencement of sections 3 to 9 and sections 26 to 57 of the *Defence Trade Controls Act 2012*. The commencement of these sections will enable trade activities to commence in relation to the *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation* (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.

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.

Stephen Smith MP, Minister for Defence