

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

Defence Trade Controls Amendment Bill 2024

No. , 2024

**A Bill for an Act to amend the *Defence Trade
Controls Act 2012*, and for related purposes**

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1 **A Bill for an Act to amend the *Defence Trade***
2 ***Controls Act 2012*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Defence Trade Controls Amendment Act 2024*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.

11

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Defence Amendment (Safeguarding Australia's Military Secrets) Act 2024</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1 **Schedule 1—Main amendments**
2

3 ***Defence Trade Controls Act 2012***

4 **1 Section 3**

5 Omit:

- | |
|--|
| 6 (a) supply DSGL technology; |
| 7 (b) arrange for other persons to supply goods in the Defence
8 and Strategic Goods List or to supply DSGL technology; |
| 9 (c) publish DSGL technology in Part 1 of that list. |

10 substitute:

- | |
|---|
| 11 (a) supply DSGL goods or DSGL technology; |
| 12 (b) provide DSGL services; |
| 13 (c) arrange for other persons to supply DSGL goods or to
14 supply DSGL technology; |
| 15 (d) publish DSGL technology in Part 1 of the Defence and
16 Strategic Goods List. |

17 **2 Subsection 4(1)**

18 Insert:

19 ***Australian Military Sales Program item*** means DSGL goods or
20 DSGL technology specified in a determination in force under
21 section 5AA.

22 ***Australian person*** means:

- 23 (a) the Commonwealth, a State or a Territory; or
24 (b) an authority of the Commonwealth, a State or a Territory; or
25 (c) an individual who is an Australian citizen; or
26 (d) an individual who is a permanent resident of Australia; or
27 (e) a body corporate incorporated by or under a law of the
28 Commonwealth or of a State or Territory.

29 ***constitutional DSGL services***: see subsection 5B(2).

30 ***constitutional supply***: see subsection 5B(1).

- 1 **covered security clearance** means a security clearance that:
2 (a) is given:
3 (i) by the Australian Government Security Vetting Agency
4 or by another Commonwealth agency that is authorised
5 or approved by the Commonwealth to issue security
6 clearances; or
7 (ii) by or on behalf of the Government of Canada, New
8 Zealand, the United Kingdom or the United States of
9 America, or an authority of any of those governments;
10 and
11 (b) is of a kind prescribed by the regulations for the purposes of
12 this definition.

13 **DSGL goods** means goods within the scope of the Defence and
14 Strategic Goods List, but does not include goods constituting
15 technology, as defined in that list, that has been produced in the
16 course of, or for the purposes of, fundamental research.

17 **DSGL services** means the giving of assistance (including training)
18 in relation to the design, development, engineering, manufacture,
19 production, assembly, testing, repair, maintenance, modification,
20 operation, demilitarisation, destruction, processing or use of DSGL
21 goods that are, or DSGL technology that is, within the scope of
22 Part 1 of the Defence and Strategic Goods List.

23 **3 Subsection 4(1) (definition of DSGL technology)**

24 Repeal the definition, substitute:

- 25 **DSGL technology** means a thing that:
26 (a) either:
27 (i) is technology, as defined in the Defence and Strategic
28 Goods List, not including such technology that has been
29 produced in the course of, or for the purposes of,
30 fundamental research; or
31 (ii) is software, as defined in that list; and
32 (b) is within the scope of that list.

33 **4 Subsection 4(1)**

34 Insert:

1 *foreign person* means a person other than an Australian person.

2 *fundamental research* means basic or applied research conducted
3 in circumstances where the results of the research:

4 (a) are intended for public disclosure, or would ordinarily be
5 published or shared broadly; and

6 (b) are not subject to any restrictions on disclosure (however
7 imposed) for purposes connected with the security or defence
8 of Australia or any foreign country.

9 *permanent resident of Australia* means a person who is a
10 permanent resident within the meaning of the *Australian*
11 *Citizenship Act 2007*.

12 *relevant DSGL services*: see subsection 5C(2).

13 *relevant supply*: see subsection 5C(1).

14 **5 After section 5A**

15 Insert:

16 **5AA Australian Military Sales Program items**

17 The Minister may, by legislative instrument, determine that
18 specified DSGL goods or DSGL technology is an Australian
19 Military Sales Program item.

20 **5B Constitutional supplies and constitutional DSGL services**

21 *Constitutional supplies*

22 (1) A supply of DSGL goods or DSGL technology is a *constitutional*
23 *supply* if:

24 (a) the supply is made by, or on behalf of, or to:

25 (i) a constitutional corporation; or

26 (ii) a body corporate that is incorporated in a Territory; or

27 (iii) a body corporate that is taken to be registered in a
28 Territory under section 119A of the *Corporations Act*
29 *2001*; or

30 (b) the supply is made by, or on behalf of, or to:

- 1 (i) the government of a foreign country or of part of a
- 2 foreign country; or
- 3 (ii) an authority of the government of a foreign country; or
- 4 (iii) an authority of the government of part of a foreign
- 5 country; or
- 6 (c) the supply is made by or to an alien (within the meaning of
- 7 paragraph 51(xix) of the Constitution); or
- 8 (d) the supply occurs wholly or partly outside Australia; or
- 9 (e) the supply is made in the course of constitutional trade or
- 10 commerce; or
- 11 (f) the supply occurs wholly or partly within a Territory; or
- 12 (g) the supply is made by way of a postal, telegraphic, telephonic
- 13 or other like service (within the meaning of paragraph 51(v)
- 14 of the Constitution).

15 *Constitutional DSGL services*

- 16 (2) DSGL services are *constitutional DSGL services* if:
- 17 (a) the DSGL services are provided by, or on behalf of, or to:
 - 18 (i) a constitutional corporation; or
 - 19 (ii) a body corporate that is incorporated in a Territory; or
 - 20 (iii) a body corporate that is taken to be registered in a
 - 21 Territory under section 119A of the *Corporations Act*
 - 22 *2001*; or
 - 23 (b) the DSGL services are provided by, or on behalf of, or to:
 - 24 (i) the government of a foreign country or of part of a
 - 25 foreign country; or
 - 26 (ii) an authority of the government of a foreign country; or
 - 27 (iii) an authority of the government of part of a foreign
 - 28 country; or
 - 29 (c) the DSGL services are provided by or to an alien (within the
 - 30 meaning of paragraph 51(xix) of the Constitution); or
 - 31 (d) the DSGL services are provided wholly or partly outside
 - 32 Australia; or
 - 33 (e) the DSGL services are provided in the course of
 - 34 constitutional trade or commerce; or
 - 35 (f) the DSGL services are provided wholly or partly within a
 - 36 Territory; or

- 1 (g) the DSGL services are provided by way of a postal,
2 telegraphic, telephonic or other like service (within the
3 meaning of paragraph 51(v) of the Constitution).

4 *Definitions*

- 5 (3) In this section:

6 ***constitutional corporation*** means a corporation to which
7 paragraph 51(xx) of the Constitution applies.

8 ***constitutional trade or commerce*** means trade or commerce:

- 9 (a) between Australia and places outside Australia; or
10 (b) among the States; or
11 (c) within a Territory, between a State and a Territory or
12 between 2 Territories.

13 **5C Relevant supplies and relevant DSGL services**

14 *Relevant supplies*

- 15 (1) A supply of DSGL goods or DSGL technology is a ***relevant supply***
16 unless:

- 17 (a) the supply is covered by subsection (1A), (1B) or (1C); and
18 (b) any requirements prescribed by the regulations for the
19 purposes of this paragraph that apply in relation to the supply
20 are satisfied.

- 21 (1A) This subsection covers a supply of DSGL goods or DSGL
22 technology if:

- 23 (a) the supply is to any of the following:
24 (i) an Australian person;
25 (ii) a citizen or permanent resident of the United Kingdom
26 or United States of America;
27 (iii) a body corporate incorporated by or under a law of the
28 United Kingdom or United States of America, or of part
29 of either of those countries;
30 (iv) the Government of the United Kingdom or United
31 States of America, or the government of part of either of
32 those countries;

- 1 (v) an authority of the Government of the United Kingdom
2 or United States of America, or the government of part
3 of either of those countries; and
4 (b) either:
5 (i) the supply is to, or occurs wholly at, a place in
6 Australia, the United Kingdom or the United States of
7 America; or
8 (ii) if the supply is the provision of access to DSGL
9 technology—at the time of the provision of access, the
10 person to whom the access is provided is in Australia,
11 the United Kingdom or the United States of America;
12 and
13 (c) the DSGL goods or DSGL technology is not:
14 (i) an Australian Military Sales Program item; or
15 (ii) excluded by a determination in force under
16 subsection (3).
- 17 (1B) This subsection covers a supply of DSGL goods or DSGL
18 technology if:
19 (a) the DSGL goods or DSGL technology is:
20 (i) an Australian Military Sales Program item; or
21 (ii) any other DSGL goods or DSGL technology not
22 excluded by a determination in force under
23 subsection (3); and
24 (b) the supply is made in accordance with an agreement or
25 arrangement between Australia and one or more foreign
26 countries, including an agreement, arrangement or
27 understanding between a Minister and an official or authority
28 of one or more foreign countries.
- 29 (1C) This subsection covers a supply of DSGL technology if:
30 (a) the supply is to any of the following:
31 (i) a citizen or permanent resident of a foreign country that
32 is specified in an instrument under subsection 15(4A);
33 (ii) a body corporate incorporated by or under a law of a
34 foreign country that is specified in an instrument under
35 that subsection; or of part of such a country;

- 1 (iii) the government of a foreign country that is specified in
- 2 an instrument under that subsection, or of part of such a
- 3 country;
- 4 (iv) an authority of the government of a foreign country that
- 5 is specified in an instrument under that subsection, or
- 6 the government of part of such a country; and
- 7 (b) any of the following applies:
- 8 (i) the place from which the supply is made and the place
- 9 to which the supply is made are both in Australia;
- 10 (ii) the supply occurs wholly at a place in Australia;
- 11 (iii) if the supply is the provision of access to DSGL
- 12 technology—at the time of the provision of access, both
- 13 the person providing the access and the person to whom
- 14 the access is provided are in Australia; and
- 15 (c) the DSGL goods or DSGL technology is not:
- 16 (i) an Australian Military Sales Program item; or
- 17 (ii) excluded by a determination in force under
- 18 subsection (3).

19 *Relevant DSGL services*

- 20 (2) DSGL services are *relevant DSGL services* unless:
- 21 (a) the provision of the DSGL services is covered by
- 22 subsection (2A) or (2B); and
- 23 (b) any requirements prescribed by the regulations for the
- 24 purposes of this paragraph that apply in relation to the
- 25 provision of the DSGL services are satisfied.
- 26 (2A) This subsection covers the provision of DSGL services if:
- 27 (a) the DSGL services are provided to any of the following:
- 28 (i) an Australian person;
- 29 (ii) a citizen or permanent resident of Canada, New
- 30 Zealand, the United Kingdom or the United States of
- 31 America;
- 32 (iii) a body corporate incorporated by or under a law of
- 33 Canada, New Zealand, the United Kingdom or the
- 34 United States of America, or of part of such a country;

- 1 (iv) the Government of Canada, New Zealand, the United
2 Kingdom or the United States of America, or the
3 government of part of such a country;
- 4 (v) an authority of the Government of Canada, New
5 Zealand, the United Kingdom or the United States of
6 America, or the government of part of such a country;
7 and
- 8 (b) the DSGL services are received at a place in Australia,
9 Canada, New Zealand, the United Kingdom or the United
10 States of America; and
- 11 (c) the DSGL goods or DSGL technology to which the DSGL
12 services relate is not:
- 13 (i) an Australian Military Sales Program item; or
14 (ii) excluded by a determination in force under
15 subsection (3).
- 16 (2B) This subsection covers the provision of DSGL services if:
- 17 (a) the DSGL goods or DSGL technology to which the DSGL
18 services relate is:
- 19 (i) an Australian Military Sales Program item; or
20 (ii) any other DSGL goods or DSGL technology not
21 excluded by a determination in force under
22 subsection (3); and
- 23 (b) the DSGL services are provided in accordance with an
24 agreement or arrangement between Australia and one or
25 more foreign countries, including an agreement, arrangement
26 or understanding between a Minister and an official or
27 authority of one or more foreign countries.

28 *Excluded DSGL goods or DSGL technology*

- 29 (3) The Minister may, by legislative instrument, determine that
30 specified DSGL goods or DSGL technology is excluded for the
31 purposes of subsections (1A), (1B), (1C), (2A) and (2B).

32 *Definitions*

- 33 (4) In this section:

34 ***place*** includes:

- 1 (a) a vehicle, vessel or aircraft; and
2 (b) an area of water; and
3 (c) a fixed or floating structure or installation of any kind.

4 **6 Section 9A**

5 Omit:

- 6 (a) supply DSGL technology;
7 (b) arrange for other persons to supply goods in the Defence
8 and Strategic Goods List or to supply DSGL technology;
9 (c) publish DSGL technology in Part 1 of that list.

10 substitute:

- 11 (a) supply DSGL goods or DSGL technology;
12 (b) provide DSGL services outside Australia;
13 (c) arrange for other persons to supply DSGL goods or to
14 supply DSGL technology;
15 (d) publish DSGL technology in Part 1 of the Defence and
16 Strategic Goods List.

17 **7 Section 9A (after the paragraph beginning “There are**
18 **offences for persons”)**

19 Insert:

20 The offences regarding supplies deal with the following:

- 21 (a) supplies of DSGL technology from a person in Australia
22 to a person outside Australia;
23 (b) supplies of DSGL technology from a person in Australia
24 to a foreign person;
25 (c) supplies of DSGL goods that were, or DSGL technology
26 that was, previously exported or supplied from
27 Australia, from a foreign country to another foreign
28 country or within the same foreign country.

29 Certain activities involving persons with a specified connection to
30 Australia, the United Kingdom or the United States of America,
31 and in some cases certain other countries, or activities involving

1 arrangements between countries, are excluded from being covered
2 by the offences.

3 **8 Section 9A**

4 Omit:

5 (c) arranging for other persons to supply goods in the
6 Defence and Strategic Goods List or to supply DSGL
7 technology.

8 substitute:

9 (c) arranging for other persons to supply DSGL goods or to
10 supply DSGL technology.

11 **9 Section 9A (paragraph beginning “Registered brokers”)**

12 Omit “goods in the Defence and Strategic Goods List”, substitute
13 “DSGL goods”.

14 **10 Section 10 (at the end of the heading)**

15 Add “from in Australia to outside Australia”.

16 **11 After paragraph 10(1)(b)**

17 Insert:

18 (ba) the supply is a constitutional supply; and

19 (bb) the supply is a relevant supply; and

20 **12 Subsection 10(1A)**

21 Repeal the subsection, substitute:

22 *Absolute liability*

23 (1A) Absolute liability applies to paragraph (1)(ba).

24 *Application to supplies to employees etc.*

25 (1B) For the purposes of subsection (1), if the supplier is not an
26 individual and supplies DSGL technology to an officer or
27 employee of the supplier, the supply is taken to be a supply by the

1 supplier to another person (that other person being the officer or
2 employee).

3 **13 Before subsection 10(2)**

4 Insert:

5 *Exceptions*

6 **14 Subsections 10(3) and (3A)**

7 Repeal the subsections, substitute:

8 (3) Subsection (1) does not apply if:

- 9 (a) the DSGL technology is supplied by or on behalf of a person
10 or body to an officer or employee of the person or body; and
- 11 (b) the officer or employee is:
 - 12 (i) an Australian citizen or permanent resident of Australia;
13 or
 - 14 (ii) a citizen or permanent resident of a foreign country that
15 is specified in an instrument under subsection 15(4A);
16 and
- 17 (c) the supply occurs in the course of the officer or employee's
18 duties as an officer or employee.

19 Note: A defendant bears an evidential burden in relation to the matter in
20 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

21 (3A) Subsection (1) does not apply if:

- 22 (a) the DSGL technology is supplied by or to a person who is a
23 member of the Australian Defence Force, an APS employee,
24 an employee of ASIO, an employee of ASIS, an employee of
25 ASD, a member or special member of the Australian Federal
26 Police or a member of the police force of a State or Territory;
27 and
- 28 (b) the supply occurs in the course of the person's duties as such
29 a person; and
- 30 (c) the DSGL technology is not:
 - 31 (i) an Australian Military Sales Program item; or
 - 32 (ii) specified in a determination in force under
33 subsection 5C(3); or

1 (iii) prescribed by the regulations for the purposes of this
2 subparagraph.

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (3A): see subsection 13.3(3) of the *Criminal Code*.

5 (3B) Subsection (1) does not apply if:

6 (a) the DSGL technology is supplied to a person who holds a
7 covered security clearance; and

8 (b) the DSGL technology is not:

9 (i) an Australian Military Sales Program item; or

10 (ii) specified in a determination in force under
11 subsection 5C(3); or

12 (iii) prescribed by the regulations for the purposes of this
13 subparagraph.

14 Note: A defendant bears an evidential burden in relation to the matter in
15 subsection (3B): see subsection 13.3(3) of the *Criminal Code*.

16 **15 After section 10**

17 Insert:

18 **10A Offence—supply of DSGL technology in Australia to foreign** 19 **person**

20 (1) A person (the *supplier*) commits an offence if:

21 (a) the supplier supplies DSGL technology to another person;
22 and

23 (b) the other person is a foreign person; and

24 (c) the supply is a constitutional supply; and

25 (d) the supply is a relevant supply; and

26 (e) any of the following applies:

27 (i) the place from which the supply is made and the place
28 to which the supply is made are both in Australia;

29 (ii) the supply occurs wholly at a place in Australia;

30 (iii) if the supply is the provision of access to DSGL
31 technology—at the time of the provision of access, both
32 the supplier and the other person are in Australia; and

33 (f) either:

- 1 (i) the supplier does not hold a permit under section 11
- 2 authorising the supply; or
- 3 (ii) the supply contravenes a condition of a permit that the
- 4 supplier holds under section 11; and
- 5 (g) there is no notice in force under subsection 14(1) in relation
- 6 to the supplier and the supply.

7 Penalty: Imprisonment for 10 years or 2,500 penalty units, or

8 both.

9 *Absolute liability*

- 10 (2) Absolute liability applies to paragraph (1)(c).

11 *Application to supplies to employees etc.*

- 12 (3) For the purposes of subsection (1), if the supplier is not an
- 13 individual and supplies DSGL technology to an officer or
- 14 employee of the supplier, the supply is taken to be a supply by the
- 15 supplier to another person (that other person being the officer or
- 16 employee).

17 *Exceptions*

- 18 (4) Subsection (1) does not apply if:
- 19 (a) the supply is of DSGL technology in relation to original
 - 20 goods; and
 - 21 (b) the supply is by an Australian Community member or by a
 - 22 member of the United States Community; and
 - 23 (c) the supply is to an Australian Community member or a
 - 24 member of the United States Community; and
 - 25 (d) the supply is for an activity referred to in Article 3(1)(a), (b),
 - 26 (c) or (d) of the Defense Trade Cooperation Treaty; and
 - 27 (e) at the time of the supply, the original goods are listed in
 - 28 Part 1 of the Defense Trade Cooperation Munitions List; and
 - 29 (f) at the time of the supply, the original goods are not listed in
 - 30 Part 2 of the Defense Trade Cooperation Munitions List.

31 Note: A defendant bears an evidential burden in relation to the matter in

32 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- 33 (6) Subsection (1) does not apply if:

- 1 (a) the DSGL technology is supplied by or to a person who is a
2 member of the Australian Defence Force, an APS employee,
3 an employee of ASIO, an employee of ASIS, an employee of
4 ASD, a member or special member of the Australian Federal
5 Police or a member of the police force of a State or Territory;
6 and
7 (b) the supply occurs in the course of the person's duties as such
8 a person; and
9 (c) the DSGL technology is not:
10 (i) an Australian Military Sales Program item; or
11 (ii) specified in a determination in force under
12 subsection 5C(3); or
13 (iii) prescribed by the regulations for the purposes of this
14 subparagraph.

15 Note: A defendant bears an evidential burden in relation to the matter in
16 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

- 17 (7) Subsection (1) does not apply if:
18 (a) the DSGL technology is supplied to a person who holds a
19 covered security clearance; and
20 (b) the DSGL technology is not:
21 (i) an Australian Military Sales Program item; or
22 (ii) specified in a determination in force under
23 subsection 5C(3); or
24 (iii) prescribed by the regulations for the purposes of this
25 subparagraph.

26 Note: A defendant bears an evidential burden in relation to the matter in
27 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- 28 (7A) Subsection (1) does not apply if:
29 (a) the DSGL technology is supplied to a person who is
30 producing, or is to produce, one or more components of
31 DSGL goods; and
32 (b) the supply is made in connection with the production of the
33 components; and
34 (c) any requirements prescribed by the regulations for the
35 purposes of this paragraph are satisfied.

36 Note: A defendant bears an evidential burden in relation to the matter in
37 subsection (7A): see subsection 13.3(3) of the *Criminal Code*.

1 (8) Subsection (1) does not apply in the circumstances prescribed by
2 the regulations for the purposes of this subsection.

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (8): see subsection 13.3(3) of the *Criminal Code*.

5 *Definitions*

6 (9) In this section:

7 *place* includes:

- 8 (a) a vehicle, vessel or aircraft; and
- 9 (b) an area of water; and
- 10 (c) a fixed or floating structure or installation of any kind.

11 **10B Offence—certain supplies of DSGL goods or DSGL technology**
12 **from outside Australia**

13 (1) A person (the *supplier*) commits an offence if:

- 14 (a) the supplier supplies (the *current supply*) DSGL goods, other
15 than firearms, or DSGL technology to another person; and
- 16 (aa) the DSGL goods or DSGL technology is within the scope of:
 - 17 (i) Part 1 of the Defence and Strategic Goods List; or
 - 18 (ii) the Sensitive List of Dual-use Goods and Technologies
19 in Part 2 of the Defence and Strategic Goods List; or
 - 20 (iii) the Very Sensitive List of Dual-use Goods and
21 Technologies in Part 2 of the Defence and Strategic
22 Goods List; and
- 23 (b) the current supply is a constitutional supply; and
- 24 (c) the current supply is a relevant supply; and
- 25 (d) any of the following applies:
 - 26 (i) the current supply occurs wholly at a place outside
27 Australia;
 - 28 (ii) the current supply is from a place outside Australia and
29 is to a place outside Australia;
 - 30 (iii) if the current supply is the provision of access to DSGL
31 technology—at the time of the provision of access, the
32 supplier is outside Australia and the other person is
33 outside Australia; and

- 1 (e) the supplier obtained the DSGL goods or DSGL technology
2 as a direct or indirect result of the export or supply (the
3 ***earlier export or supply***) of the DSGL goods or DSGL
4 technology:
5 (i) from a place in Australia to a place outside Australia; or
6 (ii) if the earlier export or supply was the provision of
7 access to DSGL technology—in circumstances where,
8 at the time of the provision of access, the person
9 providing access was in Australia and the person to
10 whom access was provided was outside Australia; and
11 (f) either of the following (whether or not obtained) was
12 required in relation to the earlier export or supply:
13 (i) permission (however described) under regulations made
14 under the *Customs Act 1901*;
15 (ii) a permit given under section 11 of this Act; and
16 (g) either:
17 (i) the supplier does not hold a permit under section 11
18 authorising the current supply; or
19 (ii) the current supply contravenes a condition of a permit
20 that the supplier holds under section 11; and
21 (h) there is no notice in force under subsection 14(1) in relation
22 to the supplier and the current supply.

23 Penalty: Imprisonment for 10 years or 2,500 penalty units, or
24 both.

25 *Application to supplies to employees etc.*

- 26 (2) For the purposes of subsection (1), if the supplier is not an
27 individual and supplies DSGL goods or DSGL technology to an
28 officer or employee of the supplier, the supply is taken to be a
29 supply by the supplier to another person (that other person being
30 the officer or employee).

31 *Absolute and strict liability*

32 (3) Absolute liability applies to paragraph (1)(b).

33 (4) Strict liability applies to paragraph (1)(f).

Exceptions

(5) Subsection (1) does not apply if:

(a) the current supply is of:

- (i) goods that are an Article 3(1) US Defence Article; or
- (ii) goods that are an Article 3(3) US Defence Article; or
- (iii) DSGL technology in relation to original goods; and

(b) the current supply is by an Australian Community member or by a member of the United States Community; and

(c) the current supply is to an Australian Community member or a member of the United States Community; and

(d) the current supply is for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and

(e) at the time of the current supply, the following are listed in Part 1 of the Defense Trade Cooperation Munitions List:

- (i) if the supply is of original goods or DSGL technology in relation to original goods—the original goods;
- (ii) if the supply is of incorporated goods—any of the original goods incorporated in the incorporated goods; and

(f) at the time of the current supply, the following are not listed in Part 2 of the Defense Trade Cooperation Munitions List:

- (i) if the supply is of original goods or DSGL technology in relation to original goods—the original goods;
- (ii) if the supply is of incorporated goods—any of the original goods incorporated in the incorporated goods.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

(6) Subsection (1) does not apply if, in relation to the current supply:

(a) the DSGL goods or DSGL technology is supplied by or on behalf of a person or body to an officer or employee of the person or body; and

(b) the officer or employee is:

- (i) an Australian citizen or permanent resident of Australia; or

1 (ii) a citizen or permanent resident of a foreign country that
2 is specified in an instrument under subsection 15(4A);
3 and

4 (c) the supply occurs in the course of the officer or employee's
5 duties as an officer or employee.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

8 (7) Subsection (1) does not apply if, in relation to the current supply:

9 (a) the DSGL goods or DSGL technology is supplied by or to a
10 person who is a member of the Australian Defence Force, an
11 APS employee, an employee of ASIO, an employee of ASIS,
12 an employee of ASD, a member or special member of the
13 Australian Federal Police or a member of the police force of
14 a State or Territory; and

15 (b) the supply occurs in the course of the person's duties as such
16 a person; and

17 (c) the DSGL goods or DSGL technology is not:

18 (i) an Australian Military Sales Program item; or

19 (ii) specified in a determination in force under
20 subsection 5C(3); or

21 (iii) prescribed by the regulations for the purposes of this
22 subparagraph.

23 Note: A defendant bears an evidential burden in relation to the matter in
24 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

25 (8) Subsection (1) does not apply if, in relation to the current supply:

26 (a) the DSGL goods or DSGL technology is supplied to a person
27 who holds a covered security clearance; and

28 (b) the DSGL goods or DSGL technology is not:

29 (i) an Australian Military Sales Program item; or

30 (ii) specified in a determination in force under
31 subsection 5C(3); or

32 (iii) prescribed by the regulations for the purposes of this
33 subparagraph.

34 Note: A defendant bears an evidential burden in relation to the matter in
35 subsection (8): see subsection 13.3(3) of the *Criminal Code*.

1 (8A) Subsection (1) does not apply if the earlier export or supply, the
2 current supply or any intervening supply of the DSGL goods or
3 DSGL technology is to the person who originally produced the
4 DSGL goods or DSGL technology.

5 Note: A defendant bears an evidential burden in relation to the matter in
6 subsection (8A): see subsection 13.3(3) of the *Criminal Code*.

7 (8B) Subsection (1) does not apply if:

8 (a) the DSGL goods or DSGL technology is within the scope of:

9 (i) the Sensitive List of Dual-use Goods and Technologies
10 in Part 2 of the Defence and Strategic Goods List; or

11 (ii) the Very Sensitive List of Dual-use Goods and
12 Technologies in Part 2 of the Defence and Strategic
13 Goods List; and

14 (b) any of the following applies:

15 (i) the current supply occurs wholly at a place in a foreign
16 country that is specified in an instrument under
17 subsection 15(4A);

18 (ii) the current supply is from or to a place in a foreign
19 country that is specified in an instrument under
20 subsection 15(4A);

21 (iii) if the current supply is the provision of access to DSGL
22 technology—at the time of the provision of access, the
23 supplier or the other person mentioned in
24 paragraph (1)(a) is in a foreign country that is specified
25 in an instrument under subsection 15(4A).

26 Note: A defendant bears an evidential burden in relation to the matter in
27 subsection (8B): see subsection 13.3(3) of the *Criminal Code*.

28 (8C) Subsection (1) does not apply if a period prescribed by the
29 regulations for the purposes of this subsection, in relation to DSGL
30 goods or DSGL technology of that kind, has elapsed since the day
31 the earlier export or supply was made.

32 Note: A defendant bears an evidential burden in relation to the matter in
33 subsection (8C): see subsection 13.3(3) of the *Criminal Code*.

34 (8D) Subsection (1) does not apply if:

35 (a) the earlier export or supply was made in accordance with a
36 permission or permit mentioned in paragraph (1)(f); and

1 (b) the permission or permit was granted before the
2 commencement of this section.

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (8D): see subsection 13.3(3) of the *Criminal Code*.

5 (9) Subsection (1) does not apply in the circumstances prescribed by
6 the regulations for the purposes of this subsection.

7 Note: A defendant bears an evidential burden in relation to the matter in
8 subsection (9): see subsection 13.3(3) of the *Criminal Code*.

9 *Geographical jurisdiction*

10 (10) Section 15.4 of the *Criminal Code* (extended geographical
11 jurisdiction—category D) applies to an offence against
12 subsection (1) of this section.

13 *Definitions*

14 (11) In this section:

15 *place* includes:

- 16 (a) a vehicle, vessel or aircraft; and
17 (b) an area of water; and
18 (c) a fixed or floating structure or installation of any kind.

19 **10C Offence—provision of DSGL services outside Australia**

- 20 (1) A person (the *provider*) commits an offence if:
21 (a) the provider provides DSGL services to another person; and
22 (b) the other person is a foreign person; and
23 (c) the DSGL services are constitutional DSGL services; and
24 (d) the DSGL services are relevant DSGL services; and
25 (e) the provider is an Australian person; and
26 (ea) the provider provides the DSGL services at or from a place
27 outside Australia; and
28 (eb) the other person receives the DSGL services at a place
29 outside Australia; and
30 (f) either:
31 (i) the provider does not hold a permit under section 11
32 authorising the provision of the DSGL services; or

- 1 (ii) the provision of the DSGL services contravenes a
- 2 condition of a permit that the provider holds under
- 3 section 11; and
- 4 (g) there is no notice in force under subsection 14(1) in relation
- 5 to the provider and the provision of the DSGL services.

6 Penalty: Imprisonment for 10 years or 2,500 penalty units, or
7 both.

8 *Absolute liability*

- 9 (2) Absolute liability applies to paragraph (1)(c).

10 *Exceptions*

- 11 (3) Subsection (1) does not apply if:
- 12 (a) the DSGL services are provided in relation to:
 - 13 (i) goods that are an Article 3(1) US Defence Article; or
 - 14 (ii) goods that are an Article 3(3) US Defence Article; or
 - 15 (iii) DSGL technology in relation to original goods; and
 - 16 (b) the DSGL services are provided by an Australian Community
 - 17 member or by a member of the United States Community;
 - 18 and
 - 19 (c) the DSGL services are provided to an Australian Community
 - 20 member or a member of the United States Community; and
 - 21 (d) the DSGL services are for an activity referred to in Article
 - 22 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation
 - 23 Treaty; and
 - 24 (e) at the time of the provision of the DSGL services, the
 - 25 following are listed in Part 1 of the Defense Trade
 - 26 Cooperation Munitions List:
 - 27 (i) if the DSGL services are provided in relation to original
 - 28 goods or DSGL technology in relation to original
 - 29 goods—the original goods;
 - 30 (ii) if the DSGL services are provided in relation to
 - 31 incorporated goods—any of the original goods
 - 32 incorporated in the incorporated goods; and
 - 33 (f) at the time of the provision of the DSGL services, the
 - 34 following are not listed in Part 2 of the Defense Trade
 - 35 Cooperation Munitions List:

- 1 (i) if the DSGL services are provided in relation to original
- 2 goods or DSGL technology in relation to original
- 3 goods—the original goods;
- 4 (ii) if the DSGL services are provided in relation to
- 5 incorporated goods—any of the original goods
- 6 incorporated in the incorporated goods.

7 Note: A defendant bears an evidential burden in relation to the matter in
8 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- 9 (4) Subsection (1) does not apply if:
- 10 (a) the DSGL services are provided by or on behalf of a person
 - 11 or body to an officer or employee of the person or body; and
 - 12 (b) the officer or employee is a citizen or permanent resident of a
 - 13 foreign country that is specified in an instrument under
 - 14 subsection 15(4A); and
 - 15 (c) the provision of the DSGL services occurs in the course of
 - 16 the officer or employee’s duties as an officer or employee.

17 Note: A defendant bears an evidential burden in relation to the matter in
18 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- 19 (5) Subsection (1) does not apply if:
- 20 (a) the DSGL services are provided in support of a lawful supply
 - 21 of DSGL goods or DSGL technology; and
 - 22 (b) the DSGL services solely consist of training with respect to,
 - 23 or the performance of, maintenance relating to the DSGL
 - 24 goods or DSGL technology; and
 - 25 (c) the maintenance covered by the training, or which is
 - 26 performed, is limited to inspection, testing, calibration or
 - 27 repair (including overhaul, reconditioning and one-to-one
 - 28 replacement of any defective items, parts or components);
 - 29 and
 - 30 (d) the maintenance covered by the training, or which is
 - 31 performed, does not include any modification, enhancement,
 - 32 upgrade or other form of alteration or improvement that:
 - 33 (i) enhances the performance or capability of the DSGL
 - 34 goods or DSGL technology; and
 - 35 (ii) is not only an alteration or improvement in relation to
 - 36 the reliability or maintainability of the DSGL goods or
 - 37 DSGL technology.

1 Note: A defendant bears an evidential burden in relation to the matter in
2 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

- 3 (6) Subsection (1) does not apply if:
- 4 (a) the DSGL services are provided by or to a person who is a
5 member of the Australian Defence Force, an APS employee,
6 an employee of ASIO, an employee of ASIS, an employee of
7 ASD, a member or special member of the Australian Federal
8 Police or a member of the police force of a State or Territory;
9 and
 - 10 (b) the provision of the DSGL services occurs in the course of
11 the person's duties as such a person; and
 - 12 (c) the DSGL services are not provided in relation to DSGL
13 goods or DSGL technology that is:
 - 14 (i) an Australian Military Sales Program item; or
 - 15 (ii) specified in a determination in force under
16 subsection 5C(3); or
 - 17 (iii) prescribed by the regulations for the purposes of this
18 subparagraph.

19 Note: A defendant bears an evidential burden in relation to the matter in
20 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

- 21 (7) Subsection (1) does not apply if:
- 22 (a) the DSGL services are provided to a person who holds a
23 covered security clearance; and
 - 24 (b) the DSGL services are not provided in relation to DSGL
25 goods or DSGL technology that is:
 - 26 (i) an Australian Military Sales Program item; or
 - 27 (ii) specified in a determination in force under
28 subsection 5C(3); or
 - 29 (iii) prescribed by the regulations for the purposes of this
30 subparagraph.

31 Note: A defendant bears an evidential burden in relation to the matter in
32 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- 33 (7A) Subsection (1) does not apply if:
- 34 (a) the DSGL services are provided in connection with a lawful
35 supply of DSGL goods or DSGL technology that occurred
36 before the commencement of this section; and

1 (b) the DSGL services are provided under a contract, agreement
2 or arrangement entered into before the commencement of this
3 section.

4 Note: A defendant bears an evidential burden in relation to the matter in
5 subsection (7A): see subsection 13.3(3) of the *Criminal Code*.

6 (8) Subsection (1) does not apply in the circumstances prescribed by
7 the regulations for the purposes of this subsection.

8 Note: A defendant bears an evidential burden in relation to the matter in
9 subsection (8): see subsection 13.3(3) of the *Criminal Code*.

10 *Geographical jurisdiction*

11 (9) Section 15.4 of the *Criminal Code* (extended geographical
12 jurisdiction—category D) applies to an offence against
13 subsection (1) of this section.

14 *Definitions*

15 (10) In this section:

16 *place* includes:

- 17 (a) a vehicle, vessel or aircraft; and
18 (b) an area of water; and
19 (c) a fixed or floating structure or installation of any kind.

20 **16 Section 11 (heading)**

21 Repeal the heading, substitute:

22 **11 Permits for the purposes of sections 10 to 10C**

23 **17 Subsections 11(1) to (6)**

24 Repeal the subsections, substitute:

25 (1) A person may apply to the Minister for a permit under this section
26 to do an activity that is:

- 27 (a) a constitutional supply of DSGL goods; or
28 (b) a constitutional supply of DSGL technology; or
29 (c) the provision of constitutional DSGL services.

30 Note: Section 66 sets out application requirements.

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- 1 (2) Without limiting subsection (1), an application by a person under
2 that subsection may do one or more of the following:
3 (a) cover 2 or more activities by the person;
4 (b) cover one or more activities by the person for a period
5 described in the application;
6 (c) cover one or more activities by the person for one or more
7 projects described in the application.
- 8 (2A) An application by a person under subsection (1), that covers one or
9 more activities by the person for one or more projects described in
10 the application, may also cover one or more activities by one or
11 more other persons (each of whom is a *project participant*) for
12 those projects.
- 13 *Minister's decision*
- 14 (3) If a person makes an application under subsection (1) in
15 accordance with section 66:
16 (a) the Minister must decide whether or not to give the person a
17 permit for each activity, by the person, covered by the
18 application; and
19 (b) if subsection (2A) of this section applies—the Minister must
20 decide whether or not to give each project participant a
21 permit for each activity, by the participant, covered by the
22 application.
- 23 (4) The Minister may give a person a permit for a specified activity if
24 the Minister is satisfied that the activity would not prejudice the
25 security, defence or international relations of Australia.
- 26 Note: Section 67 deals with giving permits under this Act.
- 27 (5) Without limiting subsection (4), a permit given by the Minister
28 may do one or more of the following:
29 (a) cover 2 or more activities;
30 (b) cover one or more specified activities for a period specified
31 in, or worked out in accordance with, the permit;
32 (c) cover one or more specified activities for one or more
33 specified projects.

1 (6) If the Minister refuses to give a person a permit for an activity
2 covered by the application, the Minister must give the person
3 notice of the refusal and the reasons for the refusal.

4 Note 1: Section 67 deals with giving notices under this Act.

5 Note 2: Section 68 deals with disclosing reasons for decisions.

6 **18 After subsection 11(7)**

7 Insert:

8 (7A) Without limiting the conditions that may be specified in the permit,
9 those conditions may impose any obligations on the person to
10 whom the permit is given that the Minister reasonably considers
11 are necessary for the purposes of:

12 (a) promoting compliance with this Act, whether by the person
13 to whom the permit is given or any other person; or

14 (b) managing risks associated with persons contravening this
15 Act.

16 (7B) To avoid doubt, an obligation mentioned in subsection (7A) may
17 apply before, at or after the time an activity covered by the permit
18 is done.

19 **19 At the end of section 11**

20 Add:

21 (11) A notice under subsection (10) must set out the effect of
22 subsections (12) and (13).

23 *Certain obligations to continue after revocation*

24 (12) If the Minister revokes a permit given to a person under this
25 section that specifies conditions imposing obligations mentioned in
26 subsection (7A) that apply after an activity covered by the permit is
27 done, the permit is taken to continue in force for the purposes of:

28 (a) sections 12 (changing permit conditions) and 13 (breaching
29 permit conditions); and

30 (b) any other provision of this Act to the extent it relates to those
31 sections.

1 (13) However, the Minister must not impose a new permit condition in
2 relation to the permit under subsection 12(1).

3 **20 Subsection 13(3)**

4 Repeal the subsection, substitute:

5 (3) Section 15.4 of the *Criminal Code* (extended geographical
6 jurisdiction—category D) applies to an offence against
7 subsection (1) of this section.

8 **21 Section 14 (heading)**

9 Repeal the heading, substitute:

10 **14 Minister’s notice prohibiting activities**

11 **22 Subsection 14(1)**

12 Repeal the subsection, substitute:

13 (1) If the Minister reasonably believes that, if a person were to do one
14 of the activities covered by subsection (1A) in any circumstances
15 or in particular circumstances, the activity would prejudice the
16 security, defence or international relations of Australia, the
17 Minister may give the person a notice:

- 18 (a) prohibiting the person from doing the activity; or
- 19 (b) prohibiting the person from doing the activity unless
- 20 conditions specified in the notice are complied with.

21 Note: Section 67 deals with giving notices under this Act.

22 (1A) The activities are as follows:

- 23 (a) a constitutional supply of particular DSGL goods at or from a
- 24 place outside Australia to a foreign person;
- 25 (b) a constitutional supply to another person of particular DSGL
- 26 technology;
- 27 (c) the provision of particular constitutional DSGL services.

28 (1B) Subsection (1A) does not cover an activity that would occur wholly
29 outside Australia unless:

- 30 (a) the activity would be done by or on behalf of an Australian
- 31 person; or

- 1 (b) the activity would relate to DSGL goods or DSGL
2 technology in circumstances where the DSGL goods or
3 DSGL technology would have been obtained as a direct or
4 indirect result of the export or supply of the DSGL goods or
5 DSGL technology:
6 (i) from a place in Australia to a place outside Australia; or
7 (ii) if that supply were the provision of access to DSGL
8 technology—in circumstances where, at the time of the
9 provision of access, the person providing access was in
10 Australia and the person to whom access was provided
11 was outside Australia.
- 12 (1C) For the purposes of subsection (1A), a supply by a person who is
13 not an individual to an officer or employee of that person is taken
14 to be a supply by the first-mentioned person to another person (that
15 other person being the officer or employee).

16 **23 Paragraphs 14(10)(a) and (b)**

17 Repeal the paragraphs, substitute:

- 18 (a) the person:
19 (i) supplies DSGL goods; or
20 (ii) supplies DSGL technology; or
21 (iii) provides DSGL services; and
22 (b) the supply of the DSGL goods or DSGL technology, or
23 provision of the DSGL services, contravenes a notice, or a
24 condition specified in a notice, that is in force under
25 subsection (1); and

26 **24 Subsection 14(11)**

27 Repeal the subsection, substitute:

- 28 (11) Section 15.4 of the *Criminal Code* (extended geographical
29 jurisdiction—category D) applies to an offence against
30 subsection (10) of this section.

31 *Definitions*

- 32 (12) In this section:
33 *place* includes:

- 1 (a) a vehicle, vessel or aircraft; and
2 (b) an area of water; and
3 (c) a fixed or floating structure or installation of any kind.

4 **25 Subparagraph 15(1)(a)(i)**

5 Omit “goods, where the goods”, substitute “DSGL goods, where the
6 DSGL goods”.

7 **26 After paragraph 15(1)(a)**

8 Insert:

- 9 (aa) the supply is, or is to be, a relevant supply; and

10 **27 Subparagraph 15(1A)(a)(i)**

11 Omit “goods, where the goods”, substitute “DSGL goods, where the
12 DSGL goods”.

13 **28 Paragraph 15(1A)(b)**

14 Omit “goods”, substitute “DSGL goods”.

15 **29 After paragraph 15(1A)(b)**

16 Insert:

- 17 (ba) the supply is, or is to be, a relevant supply; and

18 **30 Subparagraph 15(4)(a)(i)**

19 Omit “goods”, substitute “DSGL goods”.

20 **30A Paragraph 15(4)(b)**

21 Repeal the paragraph.

22 **30B After subsection 15(4A)**

23 Insert:

24 (4AA) The Minister must not specify a foreign country in an instrument
25 made under subsection (4A) unless:

- 26 (a) the foreign country is:
27 (i) a Participating State for the purposes of the Wassenaar
28 Arrangement; and
29 (ii) a participant in the Australia Group; and

- 1 (iii) a partner in the Missile Technology Control Regime;
2 and
3 (iv) a participant in the Nuclear Suppliers Group; or
4 (b) the Minister is satisfied that specifying the foreign country in
5 the instrument is in the interests of Australia's national
6 security, Australia's foreign relations or Australia's national
7 economic well-being.

8 **31 Subsection 15(4B)**

9 Omit "goods", substitute "DSGL goods".

10 **32 Subparagraph 15(4D)(a)(i)**

11 Omit "goods, where the goods", substitute "DSGL goods, where the
12 DSGL goods".

13 **33 Paragraph 15(4D)(b)**

14 Omit "goods", substitute "DSGL goods".

15 **34 Paragraph 15A(1)(a)**

16 Omit "goods listed in the Defence and Strategic Goods List", substitute
17 "DSGL goods".

18 **35 Subparagraph 15A(10)(a)(i)**

19 Omit "goods, where the goods are listed in the Defence and Strategic
20 Goods List and", substitute "DSGL goods, where".

21 **36 Paragraph 15B(1)(a)**

22 Omit "specified goods", substitute "specified DSGL goods".

23 **37 Subparagraph 15B(7)(a)(i)**

24 Omit "goods, where the goods", substitute "DSGL goods, where the
25 DSGL goods".

26 **38 Paragraph 16(1)(a)**

27 Omit "goods, where the goods are listed in the Defence and Strategic
28 Goods List", substitute "DSGL goods".

1 **39 Subsection 16(2) (examples 1, 2 and 3)**

2 Omit “goods”, substitute “DSGL goods”.

3 **40 Section 25A (note)**

4 Repeal the note, substitute:

5 Note: If after applying this section in relation to a decision under this Part, a
6 delegate of the Minister is satisfied that a thing would prejudice the
7 security, defence or international relations of Australia, the delegate
8 may be required to refer the matter to the Minister or to a more senior
9 delegate of the Minister: see subsections 73(7) to (10).

10 **40A Subsection 27(1) (note 2)**

11 Repeal the note, substitute:

12 Note 2: Sections 10 to 10C (about offences for certain activities relating to
13 DSGL goods or DSGL technology) contain exceptions that apply in
14 relation to the holder of an approval.

15 **41 Subsection 58(1)**

16 Omit “supplies that the person makes”, substitute “activities that the
17 person does”.

18 **41A Section 57A (paragraph beginning “Persons holding
19 permits under Part 2”)**

20 After “make”, insert “or DSGL services the persons provide”.

21 **41B Section 57A (after the paragraph beginning “Persons
22 holding approvals under section 27”)**

23 Insert:

24

Persons who make certain other supplies of DSGL goods or DSGL 25 technology, or who provide certain DSGL services, must also keep 26 records of those activities.

27 **41C After subsection 58(3)**

28 Insert:

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Records for other activities

- (3A) If a person makes any supply covered by subsection (3B) or (3C), the person must keep records of the supply, unless:
 - (a) the supply is made under a permit given to the person under section 11; or
 - (b) the circumstances prescribed by the regulations for the purposes of this paragraph apply.

- (3B) This subsection covers a constitutional supply of DSGL technology, in circumstances where:
 - (a) the supply is from a place in Australia and is to:
 - (i) a place outside Australia; or
 - (ii) a foreign person; or
 - (b) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the person providing the access is in Australia and the person to whom access is provided is either:
 - (i) outside Australia; or
 - (ii) a foreign person.

- (3C) This subsection covers a constitutional supply of DSGL goods or DSGL technology, in circumstances where:
 - (a) any of the following applies:
 - (i) the supply occurs wholly at a place outside Australia;
 - (ii) the supply is from a place outside Australia and is to a place outside Australia;
 - (iii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the person providing the access is outside Australia and the person to whom access is provided is outside Australia; and
 - (b) the person making the supply obtained the DSGL goods or DSGL technology as a direct or indirect result of the export or supply of the DSGL goods or DSGL technology:
 - (i) from a place in Australia to a place outside Australia; or
 - (ii) if the earlier export or supply was the provision of access to DSGL technology—in circumstances where, at the time of the provision of access, the person

-
- 1 providing the access was in Australia and the person to
2 whom the access was provided was outside Australia;
3 and
4 (c) either of the following (whether or not obtained) was
5 required in relation to the export or supply mentioned in
6 paragraph (b):
7 (i) permission (however described) under regulations made
8 under the *Customs Act 1901*;
9 (ii) a permit given under section 11 of this Act.
- 10 (3D) If an Australian person provides any constitutional DSGL services
11 to a foreign person at or from a place outside Australia, that are
12 received at a place outside Australia, the Australian person must
13 keep records of the provision of the DSGL services, unless:
14 (a) the DSGL services are provided under a permit given to the
15 Australian person under section 11; or
16 (b) the circumstances prescribed by the regulations for the
17 purposes of this paragraph apply.

18 **41D At the end of section 58**

19 Add:

20 *Definition*

21 (9) In this section:

22 *place* includes:

- 23 (a) a vehicle, vessel or aircraft; and
24 (b) an area of water; and
25 (c) a fixed or floating structure or installation of any kind.

26 **42 Paragraph 63(1)(a)**

27 Omit “a supply”, substitute “an activity”.

28 **43 Subsection 73(2)**

29 Omit “subsection 11(8), section 14”, substitute “section 11, 12 or 14”.

30 **44 After subsection 73(2)**

31 Insert:

Delegation of functions or powers under section 11, 12 or 14

1
2 (2A) Subject to subsection (2B), the Minister may, by writing, delegate
3 all or any of the Minister's functions or powers under section 11 or
4 12 to:

- 5 (a) the Secretary; or
6 (b) an SES employee, or acting SES employee, in the
7 Department; or
8 (c) an APS employee who holds, or is acting in, an Executive
9 Level 1 or 2, or equivalent, position in the Department.

10 (2B) The Minister may only delegate the Minister's functions or powers
11 under subsection 11(8) to:

- 12 (a) the Secretary; or
13 (b) an SES employee, or acting SES employee, in the
14 Department.

15 (2C) The Minister may, by writing, delegate all or any of the Minister's
16 functions or powers under section 14 to:

- 17 (a) the Secretary; or
18 (b) an SES employee, or acting SES employee, in the
19 Department.

20 **45 Subsection 73(7) (table item 1)**

21 Repeal the item.

22 **46 At the end of section 73**

23 Add:

24 (9) A delegate mentioned in paragraph (2A)(c) must not make a
25 decision under section 11 to refuse to give a person a permit for an
26 activity covered by an application for a permit, if the delegate is
27 satisfied that the activity would prejudice the security, defence or
28 international relations of Australia.

29 (10) If subsection (9) applies:

- 30 (a) the delegate must refer the particular case to:
31 (i) the Minister; or
32 (ii) a delegate mentioned in paragraph (2A)(a) or (b); and

-
- 1 (b) if the case is referred to the Minister—the Minister must
2 decide the case personally; or
3 (c) if the case is referred to a delegate mentioned in
4 paragraph (2A)(a) or (b)—that other delegate (or another
5 delegate mentioned in either of those paragraphs) must
6 decide the case.

7 **47 Application of amendments—offences etc.**

- 8 (1) The amendments of section 10 of the *Defence Trade Controls Act 2012*
9 made by this Schedule apply in relation to conduct occurring on or after
10 the start day.
- 11 (2) Sections 10A, 10B and 10C of the *Defence Trade Controls Act 2012*, as
12 inserted by this Schedule, apply in relation to conduct occurring on or
13 after the start day.
- 14 (3) The amendments of section 14 of the *Defence Trade Controls Act 2012*
15 made by this Schedule apply in relation to an activity done on or after
16 the start day.
- 17 (4) The amendments made by items 26 and 29 of this Schedule apply in
18 relation to conduct occurring on or after the start day.
- 19 (4A) The amendments of section 58 of the *Defence Trade Controls Act 2012*
20 made by this Schedule apply in relation to activities done on or after the
21 start day.
- 22 (5) In this item:
23 *start day* means the day after the end of the period of 6 months
24 beginning on the day this item commences.

25 **48 Saving provision—permits**

26 If a permit given to a person under section 11 of the *Defence Trade*
27 *Controls Act 2012* is in force immediately before this item commences,
28 the permit continues in force (and may be dealt with) on and after that
29 commencement as if it had been given under that section as amended by
30 this Schedule.

1 **49 Saving provision—prohibition notices**

2 The amendments of section 14 of the *Defence Trade Controls Act 2012*
3 made by this Schedule do not affect the continuity of a notice given to a
4 person under that section that is in force immediately before this
5 Schedule commences.

6 **49A Saving provision—foreign country list**

7 The amendments of section 15 of the *Defence Trade Controls Act 2012*
8 do not affect the continuity of an instrument that is in force under
9 subsection 15(4A) of that Act immediately before this Schedule
10 commences.

11 **50 Saving provision—delegations**

12 The amendments of section 73 of the *Defence Trade Controls Act 2012*
13 made by this Schedule do not affect the continuity of a delegation that is
14 in force under that section immediately before this Schedule
15 commences.

Schedule 2—Contingent amendments

Defence Trade Controls Act 2012

1 After the heading to subsection 10C(3)

Insert:

(2A) Subsection (1) does not apply if:

- (a) the DSGL services are provided by a person in circumstances where a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises the person to perform work for, or on behalf of:
 - (i) a military organisation (within the meaning of that Part) of a foreign country; or
 - (ii) a government body (within the meaning of that Part) of a foreign country; and
- (b) the person provides the DSGL services in the course of performing the work authorised by the foreign work authorisation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

(2B) Subsection (1) does not apply if:

- (a) the DSGL services are provided by a person in circumstances where a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises the person to provide training to:
 - (i) a military organisation (within the meaning of that Part) of a foreign country; or
 - (ii) a government body (within the meaning of that Part) of a foreign country; and
- (b) the DSGL services provided solely consist of the training that is authorised by the foreign work authorisation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B): see subsection 13.3(3) of the *Criminal Code*.

(155/23)