



Defence Trade Controls Regulation 2013

Select Legislative Instrument No. 93, 2013

made under the

Defence Trade Controls Act 2012

This future law compilation was prepared on 22 July 2024 taking into account amendments made by the *Defence Trade Legislation Amendment Regulations 2024* (F2024L00904).

These amendments are expected to commence on 1 September 2024.

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About this compilation

This compilation

This is a future compilation of the *Defence Trade Controls Regulation 2013* that shows the expected text of the law as amended by the *Defence Trade Legislation Amendment Regulations 2024* and is expected to take effect on 1 September 2024.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Name of regulation	1
3 Authority	1
4 Definitions	1
5 Australian Community member—requirements to be satisfied	2
5A Covered security clearance	2
5B Requirements relating to the definitions of <i>relevant supply</i> and <i>relevant DSGL services</i>	3
Part 2—Dealings in items on the Defence and Strategic Goods List	4
6 Exception to offence—permission to export DSGL technology	4
7 Exception to offences under sections 10, 10A, 10B and 10C of the Act—Australian Defence Article	4
7A Exception to offence under section 10A of the Act—supply to producer of components	5
7B Exception to offence under section 10A of the Act—foreign work authorisation	5
7C Exception to offence under section 10B of the Act—elapsed period	5
7D Exception to offence under section 10B of the Act—supply of DSGL goods or DSGL technology from the United Kingdom or the United States of America	6
7E Exception to offence under section 10 of the Act—supply of DSGL technology that is not a relevant supply	6
8 Criteria for deciding whether things prejudicial to security, defence or international relations of Australia	6
Part 3—Defense Trade Cooperation Treaty	9
Division 1—Approval conditions: US Defence Articles	9
9 Approval conditions—access to US Defence Articles	9
10 Approval conditions—loss, theft or destruction of US Defence Articles	9
11 Approval conditions—marking of US Defence Articles or technology	10
12 Approval conditions—marking for defence services relating to US Defence Article	11
13 Approval conditions—marking for defence services relating to technology	11
Division 2—Approval conditions: Australian Defence Articles	13
14 Approval conditions for dealing with Australian Defence Articles	13
15 Approval conditions—marking of Australian Defence Articles or technology	13
16 Approval conditions—marking for defence services relating to Australian Defence Articles	14
17 Approval conditions—marking for defence services relating to technology	14
Division 3—Approval condition: annual compliance report	16
18 Annual compliance report	16
Division 4—Exceptions to treaty offences	17
Subdivision A—Exceptions to main offence	17
19 Supply of goods, technology relating to goods or defence services	17
Subdivision B—Approval of intermediate consignees	17
20 Application for approval	17
21 Cancellation of approval	18

22	Review of decisions	19
Part 4—Monitoring powers		20
23	Identity cards.....	20
Part 6—Record-keeping		21
Division 1—Permit-holders under Part 2 of the Act		21
24	Section 11 permit holders—information to be contained in records	21
25	Registered brokers—information to be contained in records	21
Division 2—Approval-holders under section 27 of the Act		22
26	Activities for which records must be kept.....	22
27	Information to be contained in records	22
Division 3—Records for certain other activities		24
27A	Circumstances in which records are not required for other activities.....	24
27B	Other activities—information to be contained in records.....	24
Part 8—Other matters		25
Division 1—Notices, permits or approvals		25
28	Notices, permits or approvals—service and receipt	25
Division 2—Forfeiture		27
29	Storage of seized goods etc	27
30	Destruction of condemned goods etc	27
31	Dealing with condemned goods etc	27
32	Storage of condemned goods etc.....	28
Endnotes		29
Endnote 1—About the endnotes		29
Endnote 2—Abbreviation key		30
Endnote 3—Legislation history		31
Endnote 4—Amendment history		32

Part 1—Preliminary

1 Name of regulation

This regulation is the *Defence Trade Controls Regulation 2013*.

3 Authority

This regulation is made under the *Defence Trade Controls Act 2012*.

4 Definitions

In this regulation:

Act means the *Defence Trade Controls Act 2012*.

Australian Defence Article means goods to which the following apply:

- (a) the goods have been designed, developed, produced, manufactured or assembled in Australia;
- (b) the goods have been, or are being, supplied by an Australian Community member in Australia to a member of the United States Community for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty;
- (c) the goods are listed in Part 1 of the Defense Trade Cooperation Munitions List immediately before a supply mentioned in paragraph (b);
- (d) the goods are not listed in Part 2 of the Defense Trade Cooperation Munitions List immediately before a supply mentioned in paragraph (b);
- (e) the goods are not an Article 3(1) US Defence Article or an Article 3(3) US Defence Article;
- (f) immediately before a supply mentioned in paragraph (b), the export of the goods from Australia is not limited by a foreign export licence or a foreign export authorisation to which the goods are subject.

intermediate consignee means an entity that is:

- (a) a freight forwarder; or
- (b) a customs broker; or
- (c) a commercial air, land or sea freight carrier or transport provider;

and includes an entity that acts in that capacity as the agent of another entity.

Note: The following words and expressions used in this regulation have the meaning given by subsection 4(1) of the Act:

- (a) Article 3(1) US Defence Article;
- (b) Article 3(3) US Defence Article;
- (c) Australian Community member;
- (d) defence services;
- (e) Defense Trade Cooperation Munitions List;
- (f) Defense Trade Cooperation Treaty;
- (g) DSGI technology;

Section 5

- (h) foreign person;
- (i) goods;
- (j) Implementing Arrangements;
- (k) member of the United States Community;
- (l) original goods;
- (m) registered broker;
- (n) supply;
- (o) technology.

5 Australian Community member—requirements to be satisfied

- (1) For subparagraph (c)(ii) of the definition of *Australian Community member* in subsection 4(1) of the Act, this section sets out the requirements which a person must satisfy.

Citizenship requirement

- (2) The person must be an Australian citizen.
- (3) However, subsection (2) does not apply if the Commonwealth Government and the Government of the United States of America have agreed to waive the requirement for the person.

Security clearance requirement

- (4) The person must hold a security clearance:
- (a) issued by the Commonwealth Government on or after 1 October 2010; or
 - (b) issued by the Commonwealth Government before 1 October 2010 at a level other than “restricted”.
- (5) The security clearance must be current.

5A Covered security clearance

For the purposes of paragraph (b) of the definition of *covered security clearance* in subsection 4(1) of the Act, the following kinds of security clearances are prescribed:

- (a) for a clearance given by the Australian Government Security Vetting Agency or another Commonwealth agency—a clearance at Negative Vetting 1 level or a higher level;
- (b) for a clearance given by or on behalf of a government mentioned in subparagraph (a)(ii) of the definition or an authority of any of those governments—a clearance that is suitable for permitting access to information classified as secret.

5B Requirements relating to the definitions of *relevant supply* and *relevant DSGL services**Relevant supply*

- (1) The requirements in subsections (2) and (3) are prescribed for the purposes of paragraph 5C(1)(b) of the Act.

Note: These requirements are an element in excluding a supply of DSGL goods or DSGL technology from the definition of *relevant supply*: see subsection 5C(1) of the Act.

- (2) It is a requirement for a supply of DSGL goods or DSGL technology covered by subsection 5C(1A) or (1C) of the Act that the person who makes the supply has been issued, by the Department, a unique identifier described as a “Defence Export Controls Client Registration Number”.
- (3) It is also a requirement for a supply of DSGL technology covered by subsection 5C(1A) of the Act that the Department has been given the information mentioned in subsection (4) of this section before the supply is made, if:
- (a) the supply is from a place in Australia to a place outside Australia; or
 - (b) the supply is the provision of access to DSGL technology and at the time of the provision of access, the person making the supply is in Australia and the person to whom access is provided is outside Australia.
- (4) For the purposes of subsection (3), the information is the following:
- (a) a description of the DSGL technology that is to be supplied;
 - (b) the name of any person to whom the supply is to be made;
 - (c) the name of the country in which the DSGL technology supplied is to be received;
 - (d) either:
 - (i) the date on which the supply is to occur; or
 - (ii) if there are to be supplies of DSGL technology within that description over a period of time, to the same person, received in that country—the period of time in which such supplies are to occur.

Relevant DSGL services

- (5) For the purposes of paragraph 5C(2)(b) of the Act, it is a requirement for a provision of DSGL services covered by subsection 5C(2A) of the Act that the person who provides the DSGL services has been issued, by the Department, a unique identifier described as a “Defence Export Controls Client Registration Number”.

Note: This requirement is an element in excluding the DSGL services from the definition of *relevant DSGL services*: see subsection 5C(2) of the Act.

Section 6

Part 2—Dealings in items on the Defence and Strategic Goods List

6 Exception to offence—permission to export DSGL technology

For subsection 10(4) of the Act, a circumstance in which subsection 10(1) of the Act does not apply is that:

- (a) a person (the *supplier*) supplies DSGL technology in the circumstances mentioned in that subsection; and
- (b) the supplier holds a valid permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*; and
- (c) the permission allows the supply of that technology in those circumstances; and
- (d) the supplier complies with the permission.

Note: Subsection 10(1) of the Act sets out an offence about supplies relating to the Defence and Strategic Goods List.

7 Exception to offences under sections 10, 10A, 10B and 10C of the Act—Australian Defence Article

- (1) For the purposes of subsections 10(4), 10A(8), 10B(9) and 10C(8) of the Act, this section prescribes a circumstance in which subsections 10(1), 10A(1), 10B(1) and 10C(1) of the Act do not apply.
- (2) The circumstance is that:
 - (a) the supply of DSGL goods or DSGL technology, or provision of DSGL services, as mentioned in subsection 10(1), 10A(1), 10B(1) or 10C(1) of the Act (as the case requires):
 - (i) is by an Australian Community member to a member of the United States Community; or
 - (ii) is by a member of the United States Community to another member of the United States Community; and
 - (b) the supply, or the provision of DSGL services, is for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
 - (c) any of the following applies:
 - (i) for a supply of DSGL goods—at the time of the supply, the goods are an Australian Defence Article;
 - (ii) for a supply of DSGL technology—the DSGL technology relates to goods that, at the time of the supply, are an Australian Defence Article;
 - (iii) for the provision of DSGL services—the services are provided in relation to goods that, at the time the services are provided, are an Australian Defence Article.

Note: *Australian Defence Article* is defined in section 4.

7A Exception to offence under section 10A of the Act—supply to producer of components

For the purposes of paragraph 10A(7A)(c) of the Act, the following requirements are prescribed:

- (a) the DSGL technology supplied is limited to that which is reasonably necessary for the person to whom the supply is made to produce the components;
- (b) the DSGL technology supplied is not of a kind that would enable the overall design of the DSGL goods, or any means of producing the DSGL goods as a whole, to be determined.

7B Exception to offence under section 10A of the Act—foreign work authorisation

- (1) For the purposes of subsection 10A(8) of the Act, this section prescribes circumstances in which subsection 10A(1) of the Act does not apply.
- (2) A circumstance is that:
 - (a) the DSGL technology is supplied 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 supply of the DSGL technology constitutes work that is authorised by the foreign work authorisation.
- (3) A circumstance is that:
 - (a) the DSGL technology is supplied 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 supply of the DSGL technology constitutes training that is authorised by the foreign work authorisation.

7C Exception to offence under section 10B of the Act—elapsed period

- (1) For the purposes of subsection 10B(8C) of the Act, this section prescribes periods of time after an earlier export or supply was made, in relation to kinds of

Section 7D

DSGL goods or DSGL technology, after which subsection 10B(1) of the Act does not apply.

- (2) For DSGL goods or DSGL technology within the scope of Part 1 of the Defence and Strategic Goods List, the prescribed period is 12 months.
- (3) For DSGL goods or DSGL technology within the scope of the Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List, the prescribed period is 6 months.
- (4) For DSGL goods or DSGL technology within the scope of the Very Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List, the prescribed period is 12 months.

7D Exception to offence under section 10B of the Act—supply of DSGL goods or DSGL technology from the United Kingdom or the United States of America

For the purposes of subsection 10B(9) of the Act, a circumstance in which subsection 10B(1) of the Act does not apply is that the current supply referred to in subsection 10B(1) of the Act is made from a place in the United Kingdom or the United States of America.

7E Exception to offence under section 10 of the Act—supply of DSGL technology that is not a relevant supply

- (1) For the purposes of subsection 10(4) of the Act, a circumstance in which subsection 10(1) of the Act does not apply is that the supply of the DSGL technology is a supply other than a relevant supply.

Note: A supply of DSGL technology is a *relevant supply* unless certain circumstances apply: see subsection 5C(1) of the Act.

- (2) This section is repealed at the end of the period of 6 months beginning on the day Schedule 1 to the *Defence Trade Controls Amendment Act 2024* commences.

8 Criteria for deciding whether things prejudicial to security, defence or international relations of Australia

- (1) For section 25A of the Act, this section prescribes the criteria to which the Minister must have regard in deciding whether a thing (being the supply of, or arranging for other persons to supply, DSGL goods or DSGL technology, or the provision of DSGL services or the publication of certain DSGL technology) would, or would not, prejudice the security, defence or international relations of Australia.
- (2) The criteria set out in the following table are prescribed for a thing other than a supply mentioned in subsection (3) of this section.

Criteria for deciding whether things prejudicial to security, defence or international relations of Australia

Item	Criterion
1	The risk that the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to a country upon which the Security Council of the United Nations or Australia has imposed a sanction
2	The risk that the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to a country where it may be used in a way contrary to Australia's international obligations or commitments
3	The risk that the DSGL goods or DSGL technology, or the DSGL services or information provided through those services, may be used to commit or facilitate serious abuses of human rights
4	Whether the supply of the DSGL goods or technology, the provision of the DSGL services, or the publication of the DSGL technology: <ul style="list-style-type: none"> (a) may aggravate: <ul style="list-style-type: none"> (i) an existing threat to international peace and security or to the peace and security of a region; or (ii) a particular event or conflict of concern to Australia; or (b) may otherwise contribute to political instability internationally or in a particular region
5	Whether the DSGL goods or DSGL technology, or the DSGL services or information provided through those services may: <ul style="list-style-type: none"> (a) be used for conflict within a country or for international conflict by a country; or (b) further militarise conflict within a country
6	Whether the supply of the DSGL goods or DSGL technology, the provision of the DSGL services, or the publication of the DSGL technology, may compromise or adversely affect Australia's defence or security interests, its obligations to its allies or its international obligations and responsibilities
7	Whether the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to a country that has policies or strategic interests that are inconsistent with the policies and strategic interests of Australia or its allies
8	The risk that the supply of the DSGL goods or DSGL technology, the provision of the DSGL services, or the publication of the DSGL technology, may: <ul style="list-style-type: none"> (a) adversely affect Australia's military capability; or (b) substantially compromise an Australian defence operation; or (c) increase the military capability of a country that is a potential adversary of Australia

Section 8

Criteria for deciding whether things prejudicial to security, defence or international relations of Australia

Item	Criterion
9	The risk that the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to a country: <ul style="list-style-type: none"> (a) that is developing, or is reasonably suspected of developing: <ul style="list-style-type: none"> (i) weapons that may be capable of causing mass destruction; or (ii) the means of delivering such weapons; or (b) that supports, or is reasonably suspected of supporting, terrorism; or (c) whose actions or foreign policies pose a risk of major disruption in global stability or the stability of a particular region
10	Whether the supply of the DSGL goods or DSGL technology, the provision of the DSGL services, or the publication of the DSGL technology, may lead to a reaction by another country that may damage Australia's interests or relations with the other country or with a particular region
11	Whether the DSGL goods or DSGL technology, or the DSGL services or information provided through those services may be used for mercenary activities or a terrorist or other criminal activity
12	Whether preventing the supply of the DSGL goods or DSGL technology, the provision of the DSGL services, or the publication of the DSGL technology, may have an adverse effect on Australian research, industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia

(3) The criteria set out in the following table are prescribed for a supply of DSGL technology to a foreign person in Australia.

Criteria for deciding whether things prejudicial to security, defence or international relations of Australia—supply of DSGL technology to foreign person in Australia

Item	Criterion
1	The risk that the supply of the DSGL technology may: <ul style="list-style-type: none"> (a) adversely affect Australia's military capability; or (b) substantially compromise an Australian defence operation; or (c) increase the military capability of a country or organisation that is a potential adversary of Australia
2	The risk that the DSGL technology may go to or become available to a country or organisation: <ul style="list-style-type: none"> (a) that is developing, or is reasonably suspected of developing: <ul style="list-style-type: none"> (i) weapons that may be capable of causing mass destruction; or (ii) the means of delivering such weapons; or (b) that supports, or is reasonably suspected of supporting, terrorism; or (c) whose actions, or foreign policies (if applicable), pose a risk of major disruption in global stability or the stability of a particular region
3	Whether preventing the supply of the DSGL technology may have an adverse effect on Australian research, industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia

Part 3—Defense Trade Cooperation Treaty

Division 1—Approval conditions: US Defence Articles

9 Approval conditions—access to US Defence Articles

- (1) For paragraph 28(1)(c) of the Act, this section sets out conditions to which an approval given under section 27 of the Act is subject.

Note: Section 27 of the Act deals with the approval of persons as members of the Australian Community.

- (2) The holder must not give an employee or a contractor access to an Article 3(1) US Defence Article or an Article 3(3) US Defence Article that is in the holder's possession, custody or control unless the employee or contractor is an Australian Community member.
- (3) The holder must require an employee or contractor to whom the holder gives access to US Defence Articles in the holder's possession, custody or control, to comply with:
 - (a) the conditions to which the holder's approval is subject under sections 11 to 17; and
 - (b) any other conditions to which the approval is subject.

10 Approval conditions—loss, theft or destruction of US Defence Articles

- (1) For paragraph 28(1)(d) of the Act, this section sets out conditions to which an approval given under section 27 of the Act is subject.

Note: Section 27 of the Act deals with the approval of persons as members of the Australian Community.

- (2) If an Article 3(1) US Defence Article or Article 3(3) US Defence Article is lost, stolen or destroyed while it is in the possession, custody or control of the holder of the approval, the holder must notify the Secretary within 48 hours of identifying the loss, theft or destruction.
- (3) The notification must include:
 - (a) a description of the US Defence Article; and
 - (b) where applicable, the quantity, and the weight, volume or mass, of the US Defence Article; and
 - (c) the security classification given to the US Defence Article; and
 - (d) information about any other identifying markings on the item (for example, serial numbers); and
 - (e) the estimated date and time of the loss, theft or destruction; and
 - (f) the circumstances of the loss, theft or destruction; and
 - (g) information about any known risks, or risks perceived by the holder, to the public, the environment or the national interest posed by the US Defence Article itself or its loss, theft or destruction; and

Section 11

- (h) any other information about the loss, theft or destruction that the holder thinks may be relevant.

11 Approval conditions—marking of US Defence Articles or technology

- (1) For paragraph 28(1)(e) of the Act, this section sets out conditions to which an approval given under section 27 of the Act is subject.

Note: Section 27 of the Act deals with the approval of persons as members of the Australian Community.

Marking for goods

- (2) If an Article 3(1) US Defence Article or Article 3(3) US Defence Article in the holder's possession, custody or control does not have a security classification, the holder of the approval must ensure it is marked:
“//RESTRICTED USML//REL AUS and USA Treaty Community//”.
- (3) If the US Defence Article has a security classification, the holder of the approval must ensure it is marked:
“//[**CLASSIFICATION**] USML//REL AUS and USA Treaty Community//”;
where “[**CLASSIFICATION**]” means the security classification level assigned to the US Defence Article.
- (4) If the US Defence Article has a marking that the holder reasonably believes is incorrect, the holder must:
- notify the Secretary about the incorrect marking; and
 - correct, or obliterate and replace, the marking.
- (5) If it is not practicable to mark a particular US Defence Article:
- the US Defence Article must be accompanied by documentation that includes the marking; and
 - that marking must be clearly visible in the documentation.

Marking for technology

- (6) If an item of technology relating to original goods in the holder's possession, custody or control does not have a security classification, the holder must ensure it is marked:
“//RESTRICTED USML//REL AUS and USA Treaty Community//”.
- (7) If the item of technology has a security classification, the holder of the approval must ensure it is marked:
“//[**CLASSIFICATION**] USML//REL AUS and USA Treaty Community//”;
where “[**CLASSIFICATION**]” means the security classification level assigned to the technology.
- (8) If the technology has a marking that the holder reasonably believes is incorrect, the holder must:
- notify the Secretary about the incorrect marking; and

- (b) correct, or obliterate and replace, the marking.
- (9) If it is not practicable to mark each individual item of technology:
 - (a) the item must be accompanied by documentation that includes the marking;
and
 - (b) the marking must be clearly visible.
- (10) For this section, examples of documentation are contracts, invoices, shipping bills and bills of lading.

12 Approval conditions—marking for defence services relating to US Defence Article

- (1) For subparagraph 28(1)(f)(i) of the Act, this section:
 - (a) sets out conditions to which an approval given under section 27 of the Act is subject; and
 - (b) applies to the holder of an approval who provides defence services in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article.

Note: Section 27 of this Act deals with the approval of persons as members of the Australian Community.

- (2) If the US Defence Article does not have a security classification, the holder must ensure that the documentation accompanying the defence services identifies the Article by including the marking:
“//RESTRICTED USML//REL AUS and USA Treaty Community//”.
- (3) If the US Defence Article has a security classification, the holder must ensure the accompanying documentation includes a marking for it as follows:
“//[**CLASSIFICATION**] USML//REL AUS and USA Treaty Community//”;
where “[**CLASSIFICATION**]” means the security classification level assigned to US Defence Article.
- (4) If the accompanying documentation has a marking for a US Defence Article that the holder reasonably believes is incorrect, the holder must:
 - (a) notify the Secretary about the incorrect marking; and
 - (b) correct, or obliterate and replace, the marking.
- (5) If the holder provides a defence service orally, the holder must also tell the recipients, at the time providing the service, what marking has been given to the US Defence Article.

13 Approval conditions—marking for defence services relating to technology

- (1) For subparagraph 28(1)(f)(ii) of the Act, this section:
 - (a) sets out conditions to which an approval given under section 27 of the Act is subject; and
 - (b) applies to the holder of an approval who provides defence services in relation to technology relating to original goods.

Part 3 Defense Trade Cooperation Treaty

Division 1 Approval conditions: US Defence Articles

Section 13

Note: Section 27 of the Act deals with the approval of persons as members of the Australian Community.

- (2) If the technology or the original goods do not have a security classification, the holder must ensure that the documentation accompanying the defence services identifies the technology and the goods by including in the documentation the marking:
“//RESTRICTED USML//REL AUS and USA Treaty Community//”.
- (3) If the technology or the original goods have a security classification, the holder must ensure the accompanying documentation includes the following marking for the technology or the goods:
“//[*CLASSIFICATION*] USML//REL AUS and USA Treaty Community//”;
where “[*CLASSIFICATION*]” means the security classification level assigned to the technology or the original goods.
- (4) If the technology or the goods have a marking that the holder reasonably believes is incorrect, the holder must:
 - (a) notify the Secretary about the incorrect marking; and
 - (b) correct, or obliterate and replace, the marking.
- (5) If the holder provides a defence service orally, the holder must also tell the recipients, at the time of providing the service, what marking has been given to the technology and the original goods.

Division 2—Approval conditions: Australian Defence Articles

14 Approval conditions for dealing with Australian Defence Articles

For paragraph 28(1)(h) of the Act, this Division sets out conditions to which an approval given under section 27 of the Act is subject.

Note: Section 27 of the Act deals with the approval of persons as members of the Australian Community.

15 Approval conditions—marking of Australian Defence Articles or technology

Marking for goods

- (1) If an Australian Defence Article in the possession, custody or control of the holder of an approval does not have a security classification, the holder must ensure it is marked:
“//AUSTRALIAN UNCLASSIFIED USML//REL AUS and USA Treaty Community//”.
- (2) If the Australian Defence Article has a security classification, the holder must ensure it is marked:
“//AUSTRALIAN [**CLASSIFICATION LEVEL**] USML //REL AUS and USA Treaty Community//”;
where “[**CLASSIFICATION LEVEL**]” means the security classification assigned to the Article.
- (3) If it is not practicable to mark a particular Article:
 - (a) the Article must be accompanied by documentation that includes the marking; and
 - (b) that marking must be clearly visible in the documentation.

Marking for technology

- (4) If technology relating to an Australian Defence Article in the possession, custody or control of the holder of an approval does not have a security classification, the holder must ensure it is marked:
“//AUSTRALIAN UNCLASSIFIED USML//REL AUS and USA Treaty Community//”.
- (5) If the technology has a security classification, the holder of the approval must ensure it is marked:
“//AUSTRALIAN [**CLASSIFICATION LEVEL**] USML //REL AUS and USA Treaty Community//”;
where “[**CLASSIFICATION LEVEL**]” means the security classification assigned to the Article.
- (6) If it is not practicable to mark each individual item of technology:

Section 16

- (a) the item must be accompanied by documentation that includes the marking;
and
 - (b) that marking must be clearly visible.
- (7) For this section, examples of documentation are contracts, invoices, shipping bills and bills of lading.

16 Approval conditions—marking for defence services relating to Australian Defence Articles

- (1) This section applies to the holder of an approval who provides defence services relating to an Australian Defence Article.
- (2) If the Australian Defence Article does not have a security classification, the holder must ensure that the documentation accompanying the defence services identifies the Article by including the marking:
“//AUSTRALIAN UNCLASSIFIED USML//REL AUS and USA Treaty Community//”.
- (3) If the Australian Defence Article has a security classification, the holder must ensure the accompanying documentation includes a marking for it as follows:
“//AUSTRALIAN [*CLASSIFICATION LEVEL*] USML //REL AUS and USA Treaty Community//”;
where “*CLASSIFICATION LEVEL*” means the security classification assigned to the Article.
- (4) If the holder provides a defence service orally, the holder must also tell the recipients, at the time of providing the service, what marking has been given to the Australian Defence Article.

17 Approval conditions—marking for defence services relating to technology

- (1) This section applies to the holder of an approval who provides defence services in relation to technology relating to an Australian Defence Article.
- (2) If the technology or the Australian Defence Article does not have a security classification, the holder must ensure that the documentation accompanying the defence services identifies:
 - (a) the technology; or
 - (b) the Australian Defence Article;by including the marking:
“//AUSTRALIAN UNCLASSIFIED USML//REL AUS and USA Treaty Community//” for the technology of the Article.
- (3) If the technology or the Australian Defence Article has a security classification, the holder must ensure that the accompanying documentation includes a marking for the technology or the Article as follows:
“//AUSTRALIAN [*CLASSIFICATION LEVEL*] USML //REL AUS and USA Treaty Community//”;

where “[*CLASSIFICATION LEVEL*]” means the security classification assigned to the Article.

- (4) If the holder provides a defence service orally, the holder must also tell the recipients, at the time of providing the service, what marking has been given to the technology and the Australian Defence Article.

Section 18

Division 3—Approval condition: annual compliance report

18 Annual compliance report

- (1) For paragraph 28(1)(g) of the Act, the holder of an approval under section 27 of the Act must give to the Minister, within 30 days after the end of each financial year, a report in relation to the approval holder's compliance, during that year, with:
 - (a) the approval conditions under the Act and this regulation; and
 - (b) the provisions of the Act and this regulation.
- (2) The report must be made in the form approved for this section by the Secretary.

Division 4—Exceptions to treaty offences

Subdivision A—Exceptions to main offence

19 Supply of goods, technology relating to goods or defence services

- (1) For subsection 31(7) of the Act, this section sets out circumstances in which an offence in subsection 31(1), (2), (3), (4), (5) or (6) of the Act does not apply.

Note: Subsections 31(1) to (6) of the Act set out offences relating to dealings with goods, or dealings in relation to goods, that are Article 3(1) US Defence Articles or Article 3(3) US Defence Articles.

- (2) A circumstance in relation to the application of each of those subsections is that:
- (a) an Australian Community member (the *supplier*) supplies goods, technology or defence services in the circumstances mentioned in the relevant subsection; and
 - (b) the supplier holds a valid licence or other authorisation granted by the Government of the United States of America that permits the supplier to make the supply in those circumstances.
- (3) A circumstance in relation to the application of subsection 31(3) of the Act is that the receiver of a supply mentioned in that subsection is an intermediate consignee who:
- (a) is approved by the Minister under Subdivision B; and
 - (b) is engaged by the Australian Community member (the *supplier*) to receive an Article 3(1) US Defence Article or an Article 3(3) US Defence Article for the purpose only of transporting the US Defence Article to:
 - (i) the Commonwealth; or
 - (ii) another Australian Community member; or
 - (iii) an Australian Community facility; or
 - (iv) a member of the United States Community.

Note: Information and names of approved intermediate consignees is available on the Department's website at www.defence.gov.au/ustradetreaty.

Subdivision B—Approval of intermediate consignees

20 Application for approval

- (1) A person may apply to the Minister for approval as an approved intermediate consignee.
- (2) The application must:
- (a) be in the form approved, in writing, for this section by the Minister; and
 - (b) contain the information required by the form; and
 - (c) be accompanied by the documents (if any) that the form requires.

Section 21

- (3) In deciding whether to approve the person, the Minister must have regard to the following:
 - (a) whether the primary business of the person is as an intermediate consignee;
 - (b) whether the person has a tracking system in place that the Minister is satisfied would meet the requirements of subsection (4).
- (4) For paragraph (3)(b), the requirements are that the tracking system is able to:
 - (a) identify the location of an article that is in the possession, custody or control of the person; and
 - (b) record the date and the time the article is received by the person; and
 - (c) record the date and the time the person delivers the article to another person; and
 - (d) identify the person to whom the article is delivered; and
 - (e) record the place at which the article is delivered.
- (5) The Minister must not approve the person as an approved intermediate consignee unless the Minister is satisfied that the Government of the United States of America has agreed in writing to the approval being given.
- (6) The Minister must:
 - (a) as soon as practicable after making a decision on the person's application, notify the person, in writing, of the decision; and
 - (b) if the Minister refuses to approve a person as an approved intermediate consignee:
 - (i) include the reasons for the decision unless disclosing the reasons would prejudice the security, defence or international relations of Australia; and
 - (ii) if the reasons cannot be disclosed for the reason mentioned in subparagraph (i)—state that fact.
- (7) An approval is subject to:
 - (a) a condition that the intermediate consignee's tracking system continues to meet the requirements of subsection (4); and
 - (b) any other conditions specified in the approval.

21 Cancellation of approval

- (1) The Minister may, by writing, cancel a person's approval as an approved intermediate consignee:
 - (a) if the Minister reasonably believes that the person has breached a condition of the approval; or
 - (b) if the Minister is satisfied that the person's application contained information that was false or misleading; or
 - (c) if the Minister is satisfied that it is appropriate to do so because of a change in any of the circumstances on the basis of which the Minister gave the approval; or
 - (d) in any other circumstances that the Minister considers appropriate.

- (2) The Minister must give the person notice of the cancellation and the reasons for the cancellation.
- (3) The cancellation takes effect at the time the person receives the notice.

22 Review of decisions

Internal review

- (1) A person may request the Minister, in writing, to review:
 - (a) a decision made under subsection 20(6) to refuse to approve a person as an approved intermediate consignee; or
 - (b) a decision made under subsection 21(1) to cancel an approval.
- (2) The request must be made within 30 days after the day on which the person is notified of the decision.
- (3) The request must set out the reasons it is made.
- (4) The Minister must review the decision:
 - (a) personally; and
 - (b) as soon as practicable after receiving the request.
- (5) The Minister may:
 - (a) affirm, vary or revoke the decision; and
 - (b) if the Minister revokes the decision, make such other decision as the Minister thinks appropriate.
- (6) The Minister must notify the person, in writing, within 30 days after receiving a request, of:
 - (a) the decision under subsection (5); and
 - (b) the reasons for that decision, unless disclosing the reasons would prejudice the security, defence or international relations of Australia; and
 - (c) if, under paragraph (b), the reasons cannot be disclosed—the fact that the reasons cannot be disclosed; and
 - (d) the person's right to have that decision reviewed by the Administrative Appeals Tribunal.
- (7) The Minister is taken to have affirmed the decision mentioned in subsection (4) if the person does not receive notice of the Minister's decision on the review of that decision within 90 days after the person requested the Minister to review the decision.

Review by the Administrative Appeals Tribunal

- (8) Applications may be made to the Administrative Appeals Tribunal for review of:
 - (a) a decision made by the Minister under subsection (5); or
 - (b) a decision made by the Minister personally under subsection 20(6) or 21(1).

Part 4—Monitoring powers

23 Identity cards

For the purposes of paragraph 40(2)(a) of the Act, an identity card must contain the following:

- (a) the full name of the authorised officer;
- (b) the signature of the authorised officer;
- (c) the words “authorised officer for the purposes of the *Defence Trade Controls Act 2012*”;
- (d) a statement that the card is issued by the Secretary under section 40 of the Act;
- (e) the date the card was issued.

Note: Paragraph 40(2)(c) of the Act provides that an identity card issued to a person must contain a recent photograph of the person.

Part 6—Record-keeping

Division 1—Permit-holders under Part 2 of the Act

24 Section 11 permit holders—information to be contained in records

For the purposes of subsection 58(4) of the Act, the table sets out information that must be contained in the record of activities (being supplies of DSGL goods or DSGL technology or the provision of DSGL services) done under a permit a person holds under section 11 of the Act.

Information to be contained in records of activities

Item	Information
1	A description of the DSGL goods or DSGL technology supplied, or the DSGL services provided, under the permit
2	The unique identifier given to the permit under which the permit holder supplied DSGL goods or DSGL technology or provided DSGL services
3	The name of any person to whom the permit holder supplied DSGL goods or DSGL technology, or provided DSGL services, under the permit
4	Either: (a) if the permit covers one or more activities (being supplies of DSGL goods or DSGL technology or provision of DSGL services)—the date or dates of each activity; or (b) if the permit covers activities (being supplies of DSGL goods or DSGL technology or provision of DSGL services) for a period of time or for one or more projects—the period, or periods, of time during which the permit holder conducted the activities

25 Registered brokers—information to be contained in records

For subsection 58(4) of the Act, the table sets out the information that must be contained in the record of arrangements made by a registered broker under a permit the broker holds under section 16 of the Act.

Information to be contained in records of arrangements

Item	Information
1	A description of the goods or DSGL technology the registered broker arranges to be supplied under the permit
2	The unique identifier given to the permit under which the registered broker arranged a supply
3	The name of any person the registered broker arranges to supply goods or DSGL technology, and the place from which the goods or DSGL technology will be supplied
4	The date any arrangement under the permit is made
5	The name of any person that the registered broker arranges will be supplied goods or DSGL technology under the permit, and the place at which the goods or DSGL technology are to be received by that person

Part 6 Record-keeping

Division 2 Approval-holders under section 27 of the Act

Section 26

Division 2—Approval-holders under section 27 of the Act

26 Activities for which records must be kept

For subsection 58(3) of the Act, the table sets out activities done by the holder of an approval under section 27 of the Act for which records must be kept under that subsection.

Activities for which records must be kept	
Item	Activities
1	The supply of goods or technology relating to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article
2	The provision of defence services in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article
3	The provision of defence services in relation to technology relating to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article
4	Any action the person takes under a notice issued to the person by the Minister under subsection 33(4) of the Act
5	The supply of goods or technology, or provision of defence services, that is specified in a notice given by the Minister under subsection 33(7) of the Act
6	The supply of goods or technology relating to goods that are an Australian Defence Article
7	The provision of defence services in relation to goods that are an Australian Defence Article
8	The provision of defence services in relation to technology relating to goods that are an Australian Defence Article

27 Information to be contained in records

For subsection 58(4) of the Act, the table sets out information that must be contained in the record of an activity mentioned in the table in section 26.

Information to be contained in records	
Item	Information
1	A description of the goods or technology supplied, or the defence services provided
2	The unique identifier given to the authorisation under which the person does the activity
3	The date and time at which, and the place from which, goods or technology were supplied, or defence services were provided
4	The name of any intermediate consignee who receives goods or technology from the holder of an approval under section 27 of the Act, and the date the goods or technology were supplied to the intermediate consignee
5	The name of the person to whom a supply of goods, technology or defence services was supplied, the time and date of the supply and the place at which the supply was received by that person
6	If the activity involves the electronic transfer of technology or defence services, details sufficient to identify the transfer

Section 27

Information to be contained in records

Item	Information
7	The marking applied to an Article 3(1) US Defence Article or an Article 3(3) US Defence Article supplied by the person, or that is included in the accompanying documentation
8	The marking applied to an item of technology provided by the person, or that is included in the accompanying documentation
9	The marking given to a defence service, included in accompanying documentation
10	The marking applied to an Australian Defence Article supplied by the person, or that is included in the accompanying documentation

Note: Markings for US Defence Articles or related technology are provided for as a condition of an approval under section 27 of the Act: see section 11.

Division 3—Records for certain other activities

27A Circumstances in which records are not required for other activities

- (1) For the purposes of paragraph 58(3A)(b) of the Act, a circumstance in which records of a supply of DSGL goods or DSGL technology (the *current supply*) are not required to be kept under subsection 58(3A) of the Act is that:
 - (a) the person making the current supply has previously supplied DSGL goods or DSGL technology (the *earlier supply*) for which records were kept in accordance with that subsection; and
 - (b) the information contained in those records would also apply in relation to the current supply; and
 - (c) the current supply is made to the same person as the earlier supply.
- (2) For the purposes of paragraph 58(3D)(b) of the Act, a circumstance in which records of the provision of DSGL services (the *current services*) are not required to be kept under subsection 58(3D) of the Act is that:
 - (a) the person providing the current services has previously provided DSGL services (the *earlier services*) for which records were kept in accordance with that subsection; and
 - (b) the information contained in those records would also apply in relation to the current services; and
 - (c) the current services are provided to the same person as the earlier services.

27B Other activities—information to be contained in records

For the purposes of subsection 58(4) of the Act, the table sets out information that must be contained in a record of a supply of DSGL goods or DSGL technology, or provision of DSGL services, required to be kept under subsection 58(3A) or (3D) of the Act.

Information to be contained in records of activities

Item	Information
1	A description of the DSGL goods or DSGL technology supplied, or the DSGL services provided
2	The name of the country in which the DSGL goods or DSGL technology supplied, or the DSGL services provided, were received in relation to that supply or that provision of DSGL services

Part 8—Other matters

Division 1—Notices, permits or approvals

28 Notices, permits or approvals—service and receipt

- (1) For subsections 67(1) and (2) of the Act, this section sets out:
 - (a) methods for giving a notice, permit or approval to a person; and
 - (b) the time at which the person is taken to have received a notice, permit or approval given using the method.

Given personally

- (2) The notice, permit or approval may be given to the person:
 - (a) at the last address notified to the Minister for the purpose of receiving notices, permits and approvals; and
 - (b) by a person authorised by the Minister for this subsection; and
 - (c) either:
 - (i) by giving it to the person; or
 - (ii) by giving it to a person who appears to work at that address in a management or executive position.
- (3) The person is taken to have received the notice, permit or approval under subsection (2) at the time at which it is given to the person.

Sent by mail

- (4) The notice, permit or approval may be posted to the person at the postal address last notified to the Minister for the purpose of receiving notices, permits and approvals.
- (5) The person is taken to have received the notice, permit or approval under subsection (4):
 - (a) if the notice, permit or approval was posted from a place in Australia to an address in Australia—7 business days after the date of the notice, permit or approval, in the place of the address to which it was sent; or
 - (b) if paragraph (a) does not apply—21 days after the date of the notice, permit or approval, in the place of the address to which it was sent.

Faxed, emailed or sent by other electronic means

- (6) If the person has notified to the Minister a fax number, email address or other electronic address, for the purpose of receiving notices, permits and approvals, the notice, permit or approval may be:
 - (a) faxed to the person at the fax number last notified to the Minister for that purpose; or

Part 8 Other matters

Division 1 Notices, permits or approvals

Section 28

- (b) sent to the person at the email address last notified to the Minister for that purpose; or
 - (c) sent to the person by any other electronic means to the electronic address last notified to the Minister for that purpose.
- (7) The person is taken to have received the notice, permit or approval under subsection (6) at the end of the day (in the person's location) that it was sent or, if that day is not a business day, at the end of the next following business day.

Division 2—Forfeiture

29 Storage of seized goods etc

- (1) For subsection 71(7) of the Act, seized goods, technology, or things must be stored securely at a place approved, in writing, by the Minister for that purpose.
- (2) In approving a place for the storage of a kind of goods, technology or thing, the Minister must have regard to:
 - (a) the nature of goods, technology or things of that kind; and
 - (b) the suitability of that place for storing securely goods, technology or things of that kind; and
 - (c) the need to preserve the conditions and value of the goods, technology or thing as far as is practicable.

30 Destruction of condemned goods etc

- (1) For subsection 71(8) of the Act, if the Minister is satisfied that condemned goods, technology or things can safely be destroyed, they must be destroyed, to the satisfaction of the Minister, at a place, and in a way, suitable for safely destroying goods, technology or things of that kind.
- (2) Subsection (1) does not apply if:
 - (a) an approval applies to the condemned goods, technology or things under subsection 31(2); and
 - (b) the condemned goods, technology or things are sold in accordance with the approval.
- (3) In determining a suitable place for safely destroying the goods, technology or things, and the way in which they may be destroyed, the Minister must have regard to:
 - (a) the nature of the goods, technology or things; and
 - (b) the suitability of the place for destroying goods, technology or things of that kind; and
 - (c) the availability of suitable methods with which to safely destroy goods, technology or things of that kind.

31 Dealing with condemned goods etc

- (1) If the Minister is reasonably satisfied that particular condemned goods, technology or things are of a kind to which subsection (2) applies, the Minister may give a person mentioned in paragraph 71(3)(a), (b) or (c) of the Act written approval to sell the goods, technology or things.
- (2) This subsection applies to goods, technology or things that are not, under another law of the Commonwealth, a State or Territory:
 - (a) required to be destroyed; or
 - (b) illegal to sell.

Section 32

- (3) On receiving the Minister's approval to sell the goods, technology or things, the approved person must:
 - (a) offer the goods, technology or things for sale at the best reasonably achievable price; and
 - (b) if the goods, technology or things are sold—pay the proceeds to the Commonwealth.
- (4) The goods, technology or things must not be transferred to a buyer until the buyer agrees, in writing, to use them, or cause or allow them to be used, only for a lawful purpose.

32 Storage of condemned goods etc

For subsection 71(9) of the Act, until condemned goods, technology or things are destroyed or otherwise dealt with, they must be stored securely as if they were goods, technology or things to which section 29 applies.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Number and year	FRLI registration	Commencement	Application, saving and transitional provisions
93, 2013	3 June 2013 (F2013L00902)	s 6 and 7: 2 Apr 2016 (s 2 item 2) s 8, 24 and 25: 16 May 2015 (s 2 items 3, 5) Remainder: 6 June 2013 (s 2 items 1, 4, 6, 7)	
67, 2015	15 May 2015 (F2015L00693)	16 May 2015 (s 2)	—

Name	Registration	Commencement	Application, saving and transitional provisions
Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018	20 Apr 2018 (F2018L00503)	Sch 1 (items 29, 30): 21 Apr 2018 (s 2(1) item 1)	—
Statute Law Amendment (Prescribed Forms) Regulations 2024	15 Mar 2024 (F2024L00294)	Sch 1 (item 15): 20 Mar 2024 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2.....	rep LA s 48D
Part 2	
s 6.....	am F2018L00503
s 8.....	rs No 67, 2015
Part 4	
s 23.....	am F2024L00294
Part 6	
Division 1	
s 24.....	am No 67, 2015
