



Australian Government  
Defence



# DEFENCE EXPORT CONTROLS

DEEP DIVES

## Section 10B

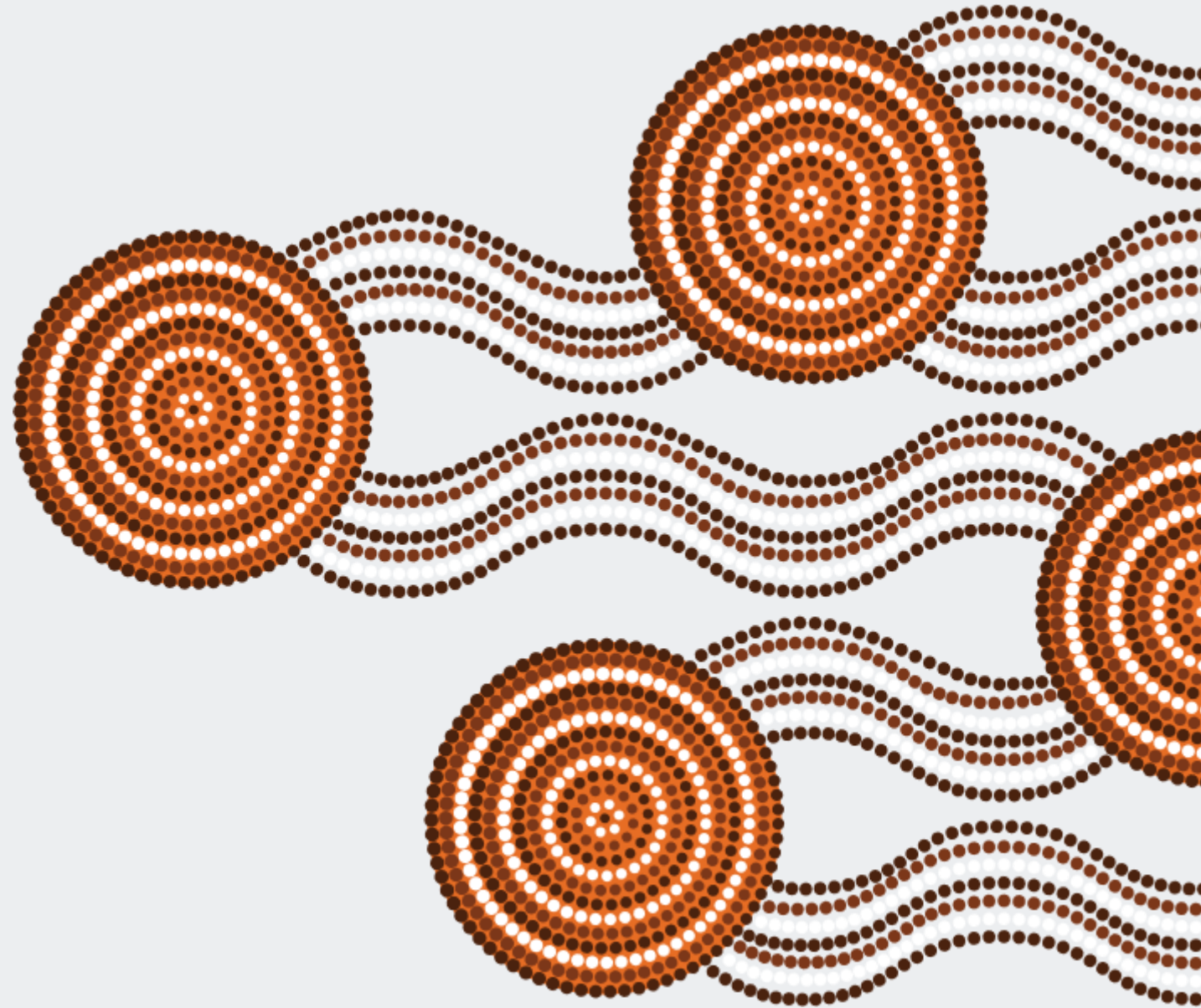
*Defence Trade Controls Act 2012*

Thursday, 28 November 2024

## Acknowledgement of Country

I would like to acknowledge the Traditional Custodians of the land on which we meet today, and pay my respects to their Elders both past and present.

I would also like to pay my respects to the Aboriginal and Torres Strait Islander men and women who have contributed to the defence of Australia in times of peace and war.



# Introduction: Export Controls Overview

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# We are Defence Export Controls

Defence Export Controls (DEC) is the **Commonwealth regulator** for the movement of defence-related goods and technology. This involves:

- **Assessing applications** to transfer
- **Issuing permits** to legally operate
- **Monitoring reporting obligations** are met
- **Performing compliance audits** (incl. end-user verification)

**Permits may be required** when seeking to **export, supply, publish** or **broker** military and/or dual-use goods and technology on the Defence Strategic Goods List (DSGL), as well as to publish or provide services related to military goods and technology on the DSGL.

# Current Export Controls Framework

DEC administers Australia's defence export controls framework through a combination of:

## Federal Legislation

Covering 'Controlled' items listed on the DSGL



[Customs \(Prohibited Exports\) Regulations 1958](#)



[Defence Trade Controls Act 2012](#)



[Weapons of Mass Destruction \(Prevention of Proliferation\) Act 1995](#)



[Customs Act 1901 Military End-Use provisions \(section 112BA\)](#)

Covering 'Uncontrolled' items not listed on the DSGL

## Legislative Instruments



[Defence and Strategic Goods List 2024](#)



[Australian Military Sales Program items 2024](#)



[Excluded DSGL Goods and Technologies List 2024](#)



[Foreign Country List 2024](#)



# Changes Have Occurred

The ***Defence Trade Controls Amendment Act 2024*** (and supporting *Defence Trade Legislation Amendment Regulations 2024*) commenced on 1 September 2024, changing Australia's defence export control laws. Two key changes were:

- 1 **Licence-free environment** between Australia / US / UK, where permits may not be required.
- 2 **3 new offences** where permits may be required (subject to 6-month transition period).

8 April 2024



*Defence Trade Controls Amendment Act 2024* received Royal Assent

1 September 2024



AUKUS licence-free environment commenced; permit applications for new offences became available

1 March 2025



Compliance transition period for new offences ends; criminal penalty provisions apply



# Expanded Export Controls Provisions

Australian defence export control offences (effective as of 1 September 2024):

	Offence Provision	Description of Control	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
<b>'Controlled' provisions</b> (covering items on the DSGL)			<b>Applies to DSGL ...</b>			
EXISTING	<b>Customs Regs (13E)</b>	Physical/tangible export of DSGL goods cross-border	✓	✓	✓	✓
EXISTING	<b>DTC Act (s10)</b>	Intangible supply of DSGL technology cross-border	✓	✓	✓	✓
NEW	<b>DTC Act (s10A)</b>	Intangible supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
NEW	<b>DTC Act (s10B)</b>	Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
NEW	<b>DTC Act (s10C)</b>	Provision of certain DSGL services outside Australia	✓	✗	✗	✗
EXISTING	<b>DTC Act (s14A)</b>	Publication of certain DSGL technology	✓	✗	✗	✗
EXISTING	<b>DTC Act (15)</b>	Brokering of certain DSGL goods and technology	✓	* ✓	* ✓	* ✓
<b>'Uncontrolled' provisions</b> (covering items not on the DSGL)			<b>Applies to DSGL ...</b>			
EXISTING	<b>WMD Act</b>	Export/supply of uncontrolled goods, and provision of services that may be used in/assist a weapons on mass destruction (WMD) program	N/A			
EXISTING	<b>Customs Act (112BA)</b>	Export of uncontrolled goods that may be for military end-use (MEU)	N/A			

\* Brokering permits only required for DSGL Part 2 when goods or technology may be for WMD or MEU purposes



## Week 4: Section 10B

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# New Offence – Section 10B

**Section 10B is one of three new offences** in the *Defence Trade Controls Act 2012*.

Defence Trade Controls Act 2012 – New Offences	Applies to DSGL ...			
	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
<b>10A:</b> Intangible supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
<b>10B:</b> Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
<b>10C:</b> Provision of certain DSGL services outside Australia	✓	✗	✗	✗



Note: permits are not required when using the **AUKUS** licence-free environment, including for these new offences

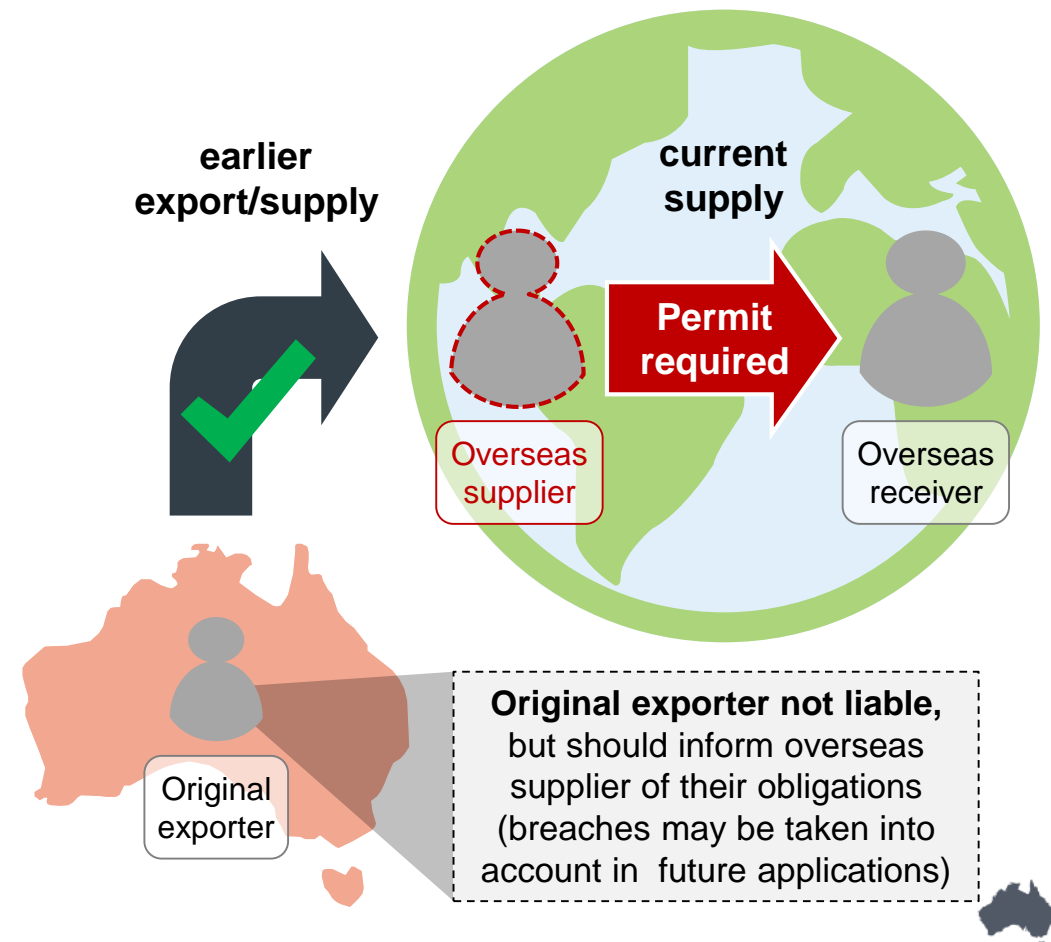


# Elements of Section 10B

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:


1. A person supplies to another person (current supply)
2. from one place outside Australia, to another place outside Australia
3. certain DSGL goods and technology (excl. firearms)
4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

**Without a permit**



# (What is) a Supply?

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

- 
- 1. A person supplies to another person** (current supply)
  2. from one place outside Australia, to another place outside Australia
  3. certain DSGL goods and technology (excl. firearms)
  4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

**Without a permit**

## *Supply includes:*

(a) supply by way of sale, exchange, gift, lease, hire or hire-purchase;

**AND**

(b) in relation to DSGL technology – includes provision of access (e.g. sending emails, info in physical documents, access to secure folders)



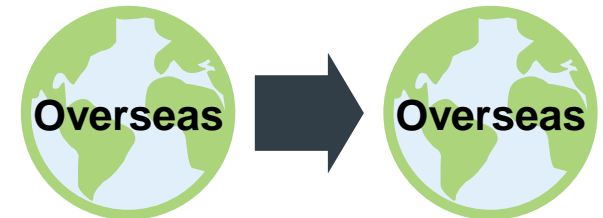
# Outside Australia

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

1. A person supplies to another person (current supply)
2. **from one place outside Australia, to another place outside Australia**
3. certain DSGI goods and technology (excl. firearms)
4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

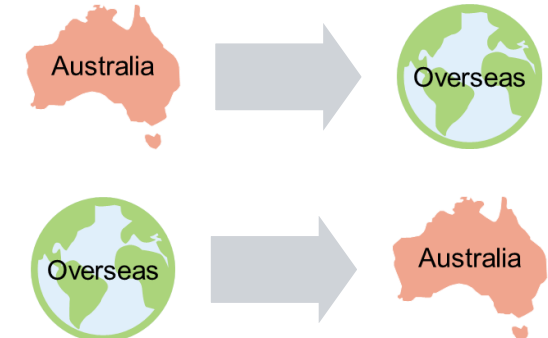
**Without a permit**

Section 10B  
applies



includes transfers within the same country

Section 10B  
does not  
apply



# Certain DSGL Goods and Technology

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

1. A person supplies to another person (current supply)
2. from one place outside Australia, to another place outside Australia
-  3. **certain DSGL goods and technology (excl. firearms)**
4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

**Without a permit**

**Section 10B is limited in application:**

**DSGL Part 1 (Munitions List)**

except firearms

**DSGL Part 2 (Dual-Use List)**

Sensitive and Very Sensitive lists only



# Previously Exported / Supplied Out of Australia

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

1. A person supplies to another person (current supply)
2. from one place outside Australia, to another place outside Australia
3. certain DSGL goods and technology (excl. firearms)
- ➔ 4. **previously exported / supplied out of Australia in a manner requiring a DEC permit** (earlier export/supply)

**Without a permit**



The overseas supplier must have obtained the DSGL goods/tech as a direct or indirect result of the earlier export/supply from Australia

**-- AND --**



The earlier export/supply required a DEC permit (e.g. Customs Regs r13E; DTC Act s10) – regardless of whether one was actually obtained or not



# Consider Elapsed Time

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Section 10B only **applies for a limited period of time** – supplies made after a prescribed period of time from the date of the earlier export/supply do not require a permit.

**DSGL Part 1 (Munitions List)**



lapses after **1 YEAR**

**DSGL Part 2 (Dual-Use List)**

Very Sensitive List



lapses after **1 YEAR**

**DSGL Part 2 (Dual-Use List)**

Sensitive List



lapses after **6 MONTHS**



# Exceptions to Section 10B

**No permit is required for Section 10B** if any of the following exceptions apply:

Source	Exception	Description
10B(5) + Reg 7	<b>Defense Trade Control Treaty</b>	Re-transfers of Treaty articles under <i>US-Australia Defense Trade Cooperation Treaty</i> .
10B(6)	<b>Intracompany (Australian / FCL)</b>	Re-transfers made within a company to Australian or FCL employees/officers in the course of their duties.
10B(7)	<b>Australian government employees*</b>	Re-transfers by or to certain Australian Government employees in the course of their duties.
10B(8)	<b>Covered security clearance*</b>	Re-transfers to NV1 or above security clearance holders (or holders of equivalent US / UK / Canada / New Zealand clearances).
10B(8A)	<b>Original equipment manufacturer</b>	Re-transfers where the earlier export/supply, current supply, or any intervening supply is to the Original Equipment Manufacturer (OEM).
10B(8B)	<b>FCL involvement (Part 2 only)</b>	Re-transfers within, to, or from an FCL country (except for DSGL Part 1).
10B(8C) + Reg 7C	<b>Elapsed period</b>	Re-transfers after certain amount of time since earlier export/supply: <ul style="list-style-type: none"> <li>12 months – DSGL Part 1 / Part 2 'Very Sensitive'.</li> <li>6 months – for DSGL Part 2 'Sensitive'.</li> </ul>
10B(8C)	<b>Grandfathering</b>	Re-transfers where permit for earlier export/supply granted before 1 September 2024.
10B(9) + Reg 7D	<b>AUKUS partners</b>	Re-transfers made from the US or UK.

Note: Refer to the [Defence Trade Controls Act 2012](#) and [Defence Trade Controls Regulations 2013](#) for detailed requirements of all exceptions.

\* does not apply to DSGL goods or technology on the [Excluded Goods and Technologies List](#) or [Australian Military Sales Program](#)





# Case Studies – Section 10B

**Section 10B can be relevant in various circumstances** (including but not limited to):

## Supplies within Companies

Company A (located in a FCL Country) receives Part 1 DSGL technology from Australia.

Company A intends to make this technology accessible to its employees on a secure internal system.

## Supplies to Other Companies

Company B (located in a non-FCL Country) receives Part 2 DSGL goods from Australia.

Company B intends to supply these DSGL goods to various partners around the world.

## Grandfathering Provision

Company C has received multiple Part 1 DSGL goods/technology, supplied lawfully from Australia with permits issued prior to 1 September 2024.

Company C intends to on-sell these goods and technology.

## How may Section 10B apply (assuming earlier export/supply required a permit)?

- If supply made from the US or UK, no permit required
- For FCL employees, no permit required
- For non-FCL employees, permit may be required to provide access to the technology (consider other exemptions)
- After 1 year, no permit required
- Only applies if the DSGL Part 2 goods are on Very Sensitive / Sensitive list
- If re-supply made to an FCL country, no permit required
- If re-supply made within the same non-FCL country or to another non-FCL country, a permit may be required
- Section 10B does not apply to any DSGL good/technology that were lawfully supplied from Australia under a permit issued before 1 September 2024
- This activity would otherwise be subject to Section 10B (consider whether other exceptions apply)

*Note: Section 10B operates independently from other nations' export controls – always consider foreign laws which may also apply*



# Legislative Criteria

**Specific legislative criteria** are used to determine if a proposed Section 10B supply may “*prejudice the security, defence or international relations of Australia*”.

## 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"> <li>(a) may aggravate:               <ul style="list-style-type: none"> <li>(i) an existing threat to international peace and security or to the peace and security of a region; or</li> <li>(ii) a particular event or conflict of concern to Australia; or</li> </ul> </li> <li>(b) may otherwise contribute to political instability internationally or in a particular region</li> </ul>
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"> <li>(a) be used for conflict within a country or for international conflict by a country; or</li> <li>(b) further militarise conflict within a country</li> </ul>
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

Item	Criterion
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"> <li>(a) adversely affect Australia’s military capability; or</li> <li>(b) substantially compromise an Australian defence operation; or</li> <li>(c) increase the military capability of a country that is a potential adversary of Australia</li> </ul>
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"> <li>(a) that is developing, or is reasonably suspected of developing:               <ul style="list-style-type: none"> <li>(i) weapons that may be capable of causing mass destruction; or</li> <li>(ii) the means of delivering such weapons; or</li> </ul> </li> <li>(b) that supports, or is reasonably suspected of supporting, terrorism; or</li> <li>(c) whose actions or foreign policies pose a risk of major disruption in global stability or the stability of a particular region</li> </ul>
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



# Record Keeping Obligations

**Records must be kept** when conducting Section 10B **activities under a permit** – OR – when conducting Section 10B **activities under an exemption**.\*

Permit Activities	Exempted Activities	You will need to retain / provide ...
✓	✓	<b>Description</b> of DSGL goods, technology, or services provided
✓		<b>Name of person</b> who received DSGL goods, technology, or services
	✓	<b>Country</b> in which DSGL goods, technology, or services were received
✓		<b>Date(s)</b> of activity / activities under permit
✓		<b>Unique identifier</b> of permit

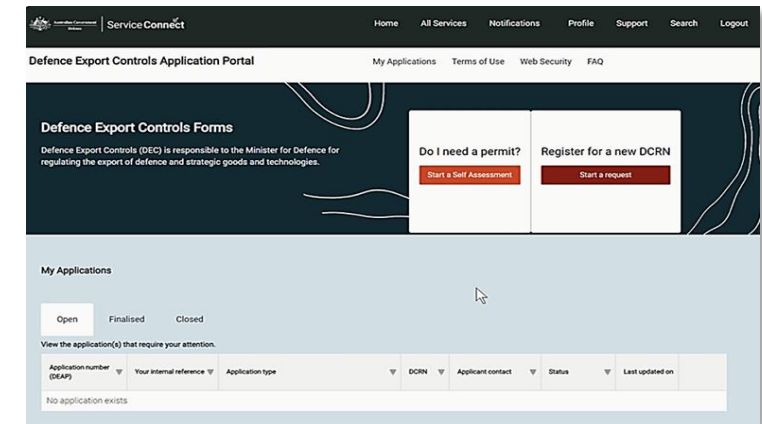
**Records must be retained for 5 years** from the date of export/supply, or provision of services. Failure to retain or produce records is an offence under the *Defence Trade Controls Act 2012*.



# In Summary – Section 10B

**Depending on your circumstances, you may now require a permit** for the offshore supply of certain DSGL goods or technology, which were earlier exported or supplied from Australia.

If you require a Section 10B permit, apply via the [My Australian Defence Exports \(MADE\)](#) portal.



## SECTION 10B Things to Remember ...

- **New offence introduced, bringing Australia in-line with the US and UK**
- **Applies to DSGL Part 1 + Part 2 Very Sensitive / Sensitive only**
- **Supplies from US / UK exempt; FCL countries exempt for Part 2**
- **Original exporter should inform overseas recipient of obligations**
- **Lapses after at most 1 year since earlier export/supply**



## Close: Wrap-Up

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# Penalties

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Those prosecuted for offences under Australia's export control laws may face a **penalty of up to 10 years imprisonment, and/or a fine up to 2,500 penalty units**.\*

## Compliance Transition Period

Although the *DTC Amendment Act* commenced on 1 September 2024, a 6-month transition period applies to the Section 10A, 10B, and 10C offences.

From 1 March 2025, criminal penalties will apply to those offences.

\* one penalty unit (as of 7 November 2024) = \$330, for a **total maximum fine of \$825,000**



# DEC Deep Dives

Defence Export Controls is delivering **targeted outreach sessions** in preparation for the end of the compliance transition period on 1 March 2025 for the new controls.

Date	Topic
Thu 7 Nov	AUKUS Licence-free Environment
Thu 14 Nov	Section 10A
Thu 21 Nov	Fundamental Research & Nationality
Thu 28 Nov	Section 10B
Fri 6 Dec	Section 10C
Tue 10 Dec	Compliance and Reporting Obligations

Packs from each presentation and information on other Outreach events are accessible on the Defence Export Controls website:

[Outreach and training | Business & Industry | Defence](#)





# Where to Get Help and Assistance?

- 1. Contact your organisation's export controls office**
- 2. Visit the Defence Export Controls website**  
[www.defence.gov.au/business-industry/export/controls](http://www.defence.gov.au/business-industry/export/controls)
- 3. Use the MADE portal self-help tool and guidance materials**
- 4. Email [exportcontrols@defence.gov.au](mailto:exportcontrols@defence.gov.au)**
- 5. Call 1800 333 362 (1800 DEFENCE) 'Option 4'**  
between 8.30-16.30 EST

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