



Australian Government  
Defence



# DEFENCE EXPORT CONTROLS

DEEP DIVES

**Section 10C**

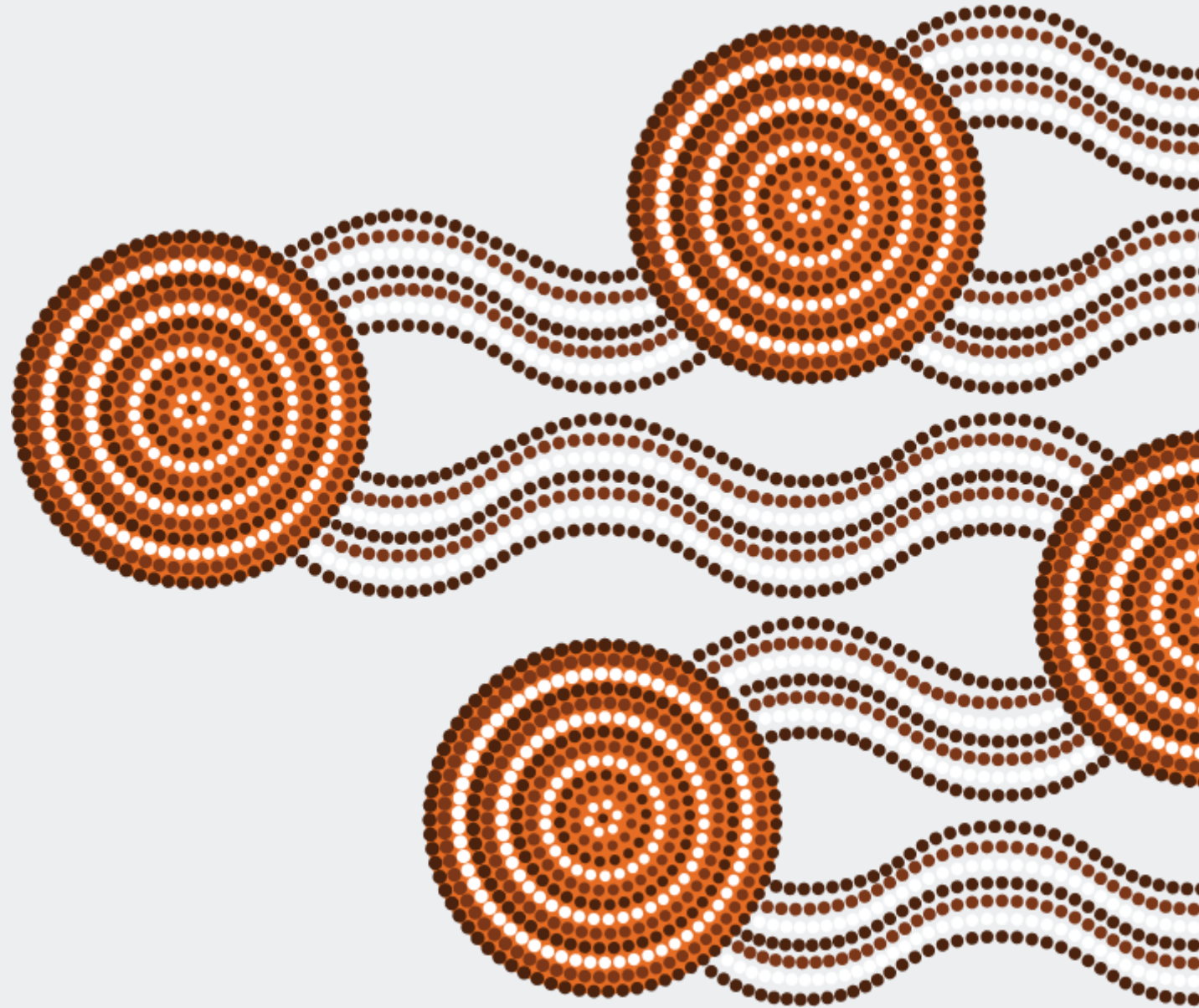
*Defence Trade Controls Act 2012*

Friday, 6 December 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 and 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](#)



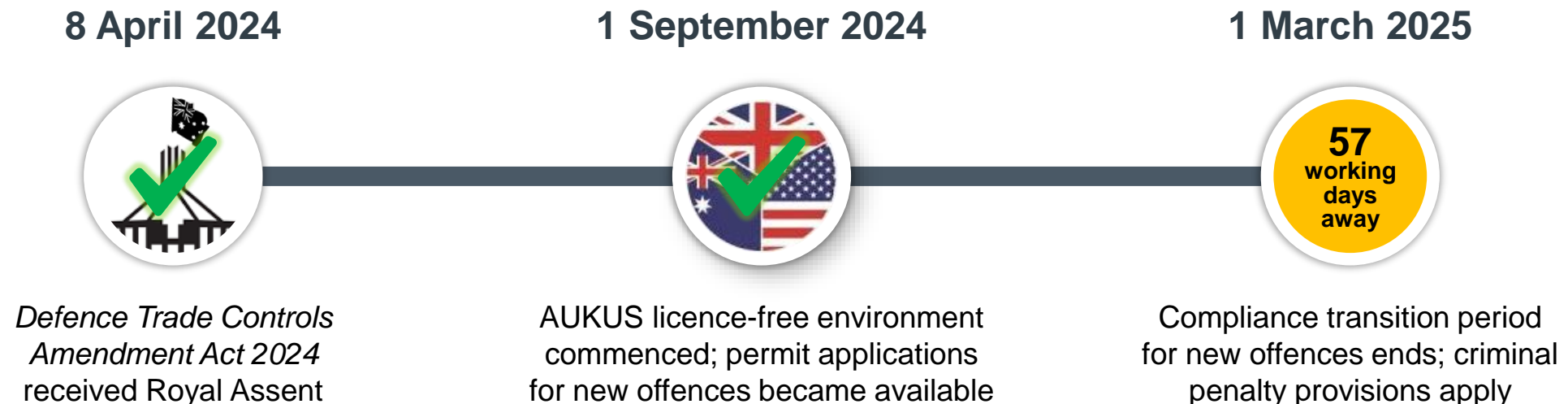
[Foreign Country List 2024](#)



# 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).





# 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 5: Section 10C

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# New Offence – Section 10C

**Section 10C 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

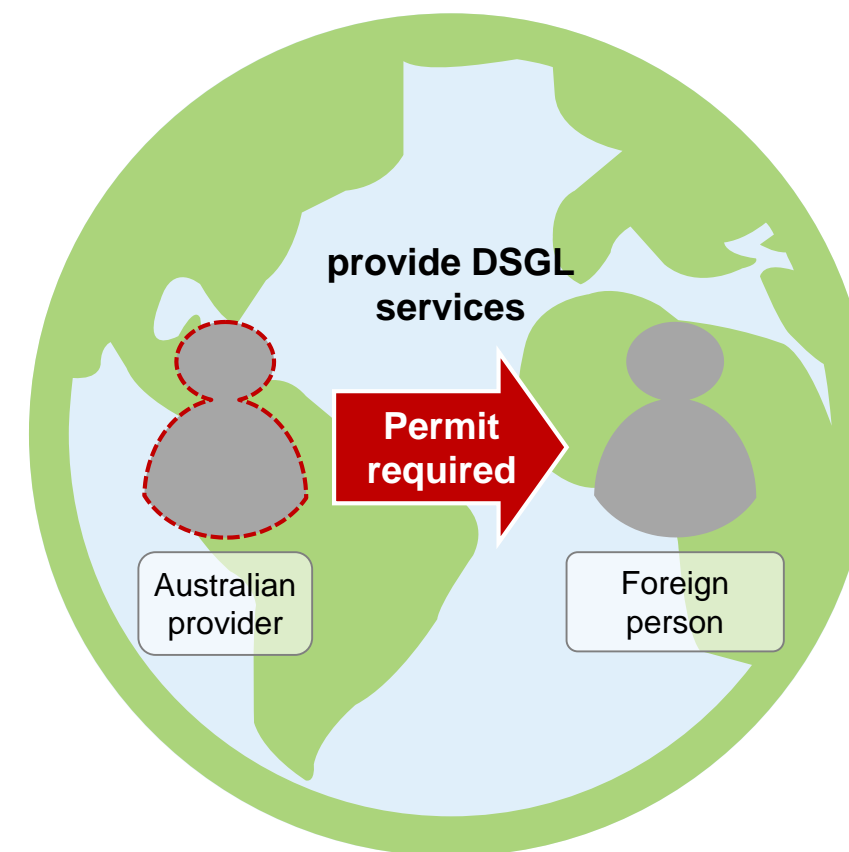


## Section 10C Overview

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

- 1. An Australian person located outside Australia**
- 2. provides certain DSGL services**
- 3. to a foreign person located outside Australia**

**Without a permit**



# Australian Person Overseas

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

- 
- 1. An Australian person located outside Australia**
  2. provides certain DSGL services
  3. to a foreign person located outside Australia

**Without a permit**

**Service provider is an Australia person**



*Australian person* includes:

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



# Part 1 DSGL Services

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

1. An Australian person located outside Australia
2. **provides certain DSGL services**
3. to a foreign person located outside Australia

**Without a permit**

*DSGL services means the giving of assistance (incl. training) for goods or technology on DSGL Part 1 only.*

**'Assistance' or 'training' can be for the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing, or use of DSGL Part 1 goods or technology.**



# Foreign Person Overseas

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

1. An Australian person located outside Australia
2. provides certain DSGL services
3. **to a foreign person located outside Australia**

**Without a permit**

**Overseas foreign person**  
(noting Five Eyes exemption)



*foreign person* is an individual, corporate entity, government, or government authority that is not an Australian person

Note: For Section 10C, this does not include certain services provided to Five Eyes foreign persons located in a Five Eyes country.



# Exceptions to Section 10C

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

Source	Exception	Description
5C(2A)	<b>Five Eyes Recipients*</b>	Services provided to Canada/New Zealand/UK/US citizens, permanent residents, corporations, or governments/government authorities, received in any of those countries.
10C(2A) + 10C(2B)	<b>Foreign Work Authorisation (SAMS)</b>	Service provider holds a <i>Foreign Work Authorisation</i> under SAMS Legislation for relevant work or training (for more information visit: <a href="http://www.defence.gov.au/SAMS">www.defence.gov.au/SAMS</a> ).
10C(3) + Reg 7	<b>Defense Trade Cooperation Treaty</b>	Services provided in relation to Treaty articles under <i>US-Australia Defense Trade Cooperation Treaty</i> .
10C(4)	<b>Intracompany (FCL)</b>	Services provided within a company to FCL employees/officers in the course of their duties.
10C(5)	<b>Maintenance services</b>	Services involving (the performance of / training related to) limited forms of maintenance [see 10C(5)(c)/(d)], provided in support of a lawful supply of DSGL goods/tech.
10C(6)	<b>Australian government employees*</b>	Provision by or to certain Australian Government employees in the course of their duties.
10C(7)	<b>Covered security clearance*</b>	Provision to NV1 or above security clearance holders (or holders of equivalent US / UK / Canada / New Zealand clearances).
10C(7A)	<b>Grandfathering</b>	Services provided in connection with a lawful export/supply that occurred (and under a contract/agreement entered into) before 1 September 2024.

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



# Case Studies – Section 10C

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

## Requested Services

A foreign government has received vehicles from a third party supplier that are Part 1 DSGL goods.

Foreign government officials approach an Australian person and request their professional services to modify and enhance operational capabilities of those vehicles.

The Australian person would provide the DSGL services in person to the officials at a location outside of Australia.

### How may Section 10C apply?

- If the foreign government officials are from Canada/NZ/UK/US, and are receiving the services in any of those countries, no permit required (assuming the DSGL goods are not ETL/AMSP).
- Maintenance exception does not apply since services include upgrades which enhance the capability of the DSGL goods.

## Company Services

An Australian company previously lawfully exported certain Part 1 DSGL goods overseas to their foreign customer.

That Australian company has now been contracted by their foreign customer to provide them with training regarding maintenance and use of those Part 1 DSGL goods.

The Australian company would provide these DSGL services at various sites outside of Australia.

### How may Section 10C apply?

- Services related to maintenance only may be exempt
- Services related to use may be controlled, and require a permit
- Grandfathering may apply if the export of the DSGL goods occurred (and services contract entered into) before 1 September 2024

**Remember:** if the relevant person holds a valid SAMS Foreign Work Authorisation (FWA) for the same activity, a DEC permit is not required. For more information visit: [www.defence.gov.au/SAMS](http://www.defence.gov.au/SAMS)





# SAMS – Applicability



The *Defence Act Part IXAA (Security Australia's Military Secrets) Act 2024* commenced on 6 May 2024. Penalties for an offence under the Act started on 7 August 2024. Individuals covered by the SAMS legislation must seek authorisation before commencing work or training.

## Division 2 : Work (Including Training)

Any former **Australian Defence Force personnel**, and **Department of Defence Australian public servants**, and **Australian Submarine Agency public servants** must obtain a Foreign Work Authorisation (FWA) from Defence before working for a foreign military organisation, government body or government controlled entity.

- (a) the kind of work, and the role, performed by the individual as a defence staff member;
- (b) any other kind of work, that the Minister is aware of, performed by the individual other than as a defence staff member;
- (c) the length of time that the individual was a defence staff member;
- (d) the kind of information accessed by the individual while a defence staff member;
- (e) the kind of work the individual would perform if the authorisation were granted;
- (f) the military organisation, or the government body, of the foreign country for which, or on behalf of which, the individual would perform that work if the authorisation were granted

## Division 3 : Training

Any **Australian citizen** or **permanent resident** must obtain a Foreign Work Authorisation (FWA) from Defence before providing training involving military related tactics, techniques and procedures or goods, software or technology within the scope of Part 1 of the Defence and Strategic Goods List.

- (a) the kind of training the individual would provide if the authorisation were granted;
- (b) the military organisation, or the government body, of the foreign country to which, or on behalf of which, the individual would provide that training if the authorisation were granted.

# SAMS – Instruments and Exceptions



## 'Country List' - Legislative instrument

*Defence (Non-relevant foreign country) Determination 2024*

- Canada
- New Zealand
- United Kingdom
- United States of America



## Job Families – Legislative Instrument

*Defence (Non-foreign work restricted individual) Determination 2024*

### APS

Job families - 19

Job family functions - 87

Specific occupations - 1236

### ADF

Strategic work force segments - 8

Job Roles - 290

- Army - 107
- Navy - 95
- RAAF - 88

## Exceptions

- Employed by the Commonwealth
- Authorised by Commonwealth written agreement
- Service in a national Defence force
- UN / UN Agencies / ICRC





To request a Foreign Work Authorisation visit  
[www.defence.gov.au/SAMS](http://www.defence.gov.au/SAMS)

For more information email  
[SAMS.info@defence.gov.au](mailto:SAMS.info@defence.gov.au)



[www.forcenet.gov.au](http://www.forcenet.gov.au)

The screenshot shows the Australian Government Defence website page for 'Safeguarding Australia's Military Secrets'. A prominent red notification box states: 'SAMS offences commence from 7 August 2024. From 7 August 2024, individuals who want to work for or deliver training to a foreign military organisation or government body, must be granted a foreign work authorisation before commencing work. If authorisation is not granted, individuals risk committing an offence under the SAMS legislation. Individuals who submitted an application before 7 August 2024 and are already working for a foreign military or government, can continue that work until the outcome of their foreign work authorisation has been finalised. Individuals who are currently working but have not yet submitted an application, must submit an application request as soon possible. SAMS briefing sessions: Briefing sessions are available for anyone interested in learning more about the new SAMS legislation and the process for requesting a foreign work authorisation. The sessions are run virtually and are open to anyone that wants to attend. Session times and details to register are via the Industry training and events page.' Below this, there is a 'Submit a request' button with a 'FOREIGN WORK AUTHORISATION REQUEST FORM' link. The page also features a 'Date of commencement' section explaining the Defence Amendment (Safeguarding Australia's Military Secrets) Act 2024, introduced on 6 May 2024, which requires individuals to assess their requirements for foreign work authorisation. A 'Key' section lists categories of individuals affected, including former members of the Australian Defence Force and all Australian citizens or permanent residents providing training to a foreign military or government body. A ForceNet notification from ForceNet Headquarters is overlaid on the right side, dated 6 May 2024 at 15:31, with a 'Close' button. At the bottom right, a blue banner reads: 'Safeguarding Australia's Military Secrets. Know your obligations, obtain authorisation, and safeguard Australia's future. Check if the new law applies to you www.defence.gov.au/sams'.

# Legislative Criteria

**Specific legislative criteria** are used to determine if a proposed Section 10C service 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 10C **activities under a permit** – OR – when conducting Section 10C **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

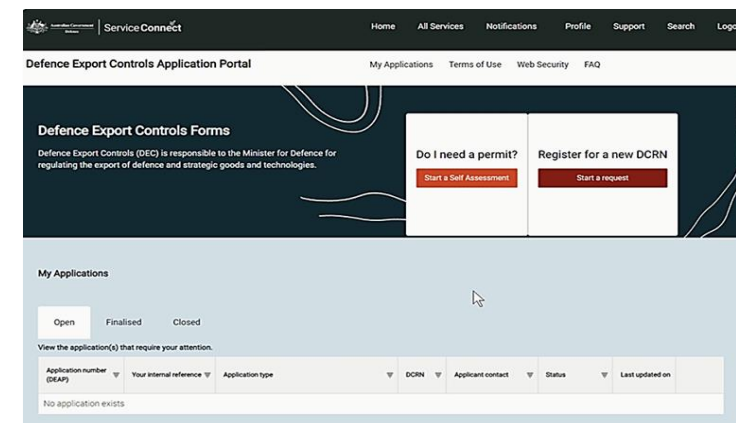
**Records must be retained for 5 years** from the date of export/supply, or provision of services. Failure to retain or produce records is an offence under the *Defence Trade Controls Act 2012*.



# In Summary – Section 10C

**Depending on your circumstances, you may now require a permit** if – as an Australian person – you provide services while overseas related to Part 1 of the DSGL to a foreign person.

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



## SECTION 10C Things to Remember ...

- **New offence introduced, bringing Australia in-line with US and UK**
- **DSGL services must be provided by an Australian overseas**
- **Only covers certain services related to DSGL Part 1 goods or technology**
- **Five Eyes recipients from US/UK/Canada/NZ exempt (excl. ETL/AMSP items)**
- **Exemption if SAMS *Foreign Work Authorisation* held for same activity**





## 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

**DEFENCE  
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