



Australian Government
Defence



DEFENCE EXPORT CONTROLS

DEEP DIVES

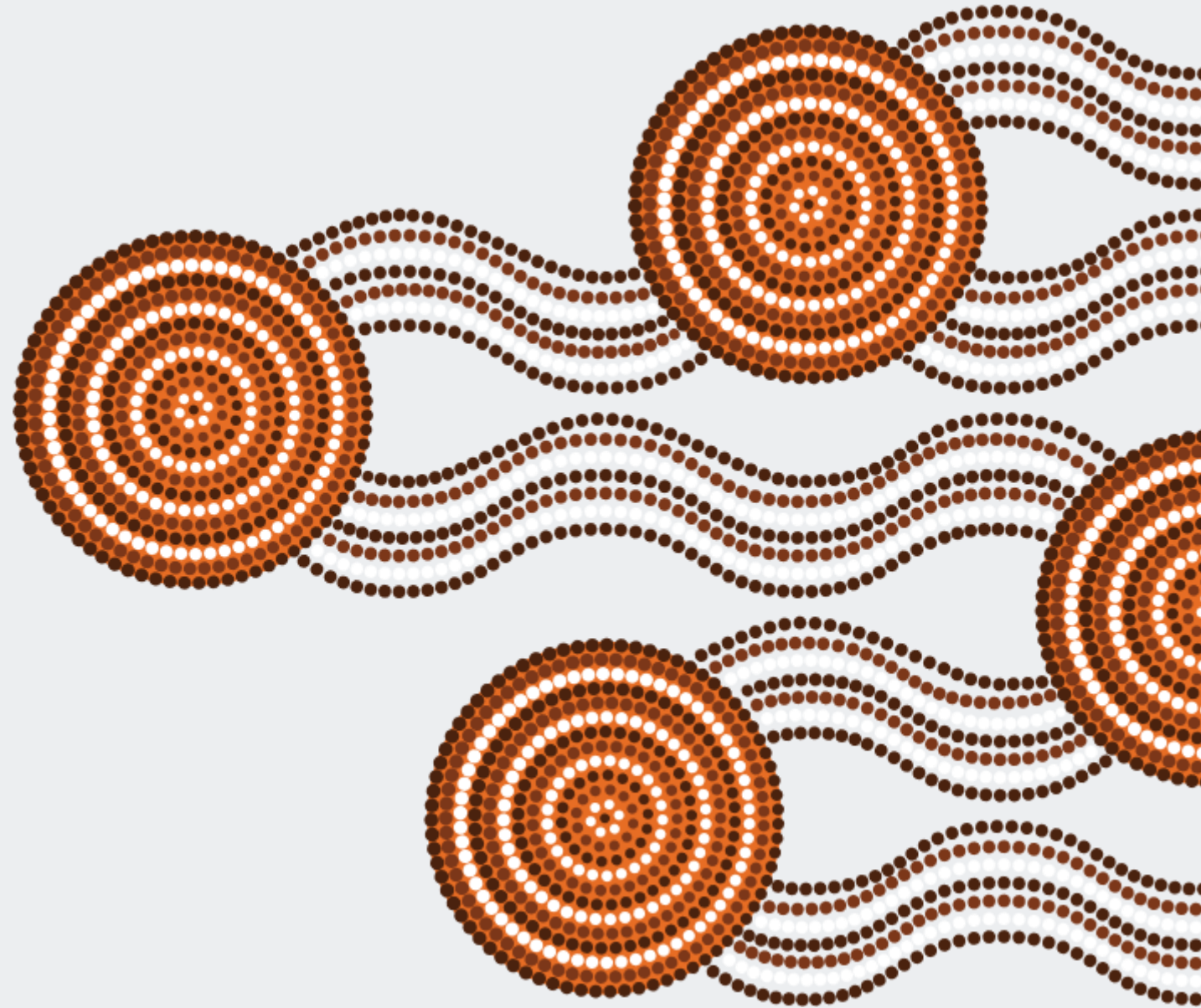
**Fundamental Research
& Nationality**

Thursday, 21 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

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](#)



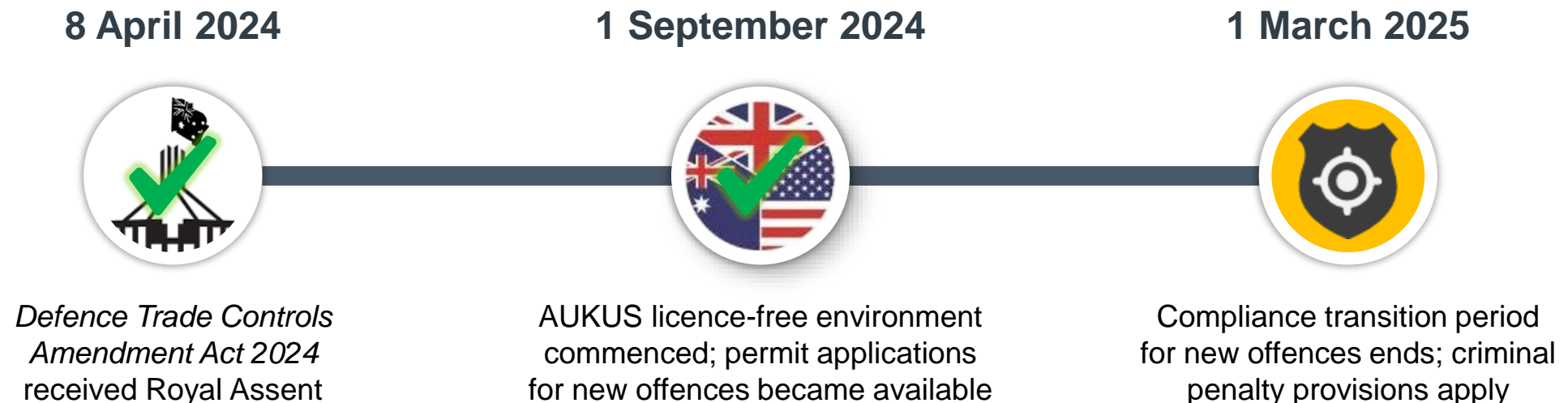
[Foreign Country List 2024](#)



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).



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)
'Controlled' provisions (covering items on the DSGL)			Applies to DSGL ...			
EXISTING	Customs Regs (13E)	Physical/tangible export of DSGL goods cross-border	✓	✓	✓	✓
EXISTING	DTC Act (s10)	Intangible supply of DSGL technology cross-border	✓	✓	✓	✓
NEW	DTC Act (s10A)	Supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
NEW	DTC Act (s10B)	Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
NEW	DTC Act (s10C)	Provision of certain DSGL services outside Australia	✓	✗	✗	✗
EXISTING	DTC Act (s14A)	Publication of certain DSGL technology	✓	✗	✗	✗
EXISTING	DTC Act (15)	Brokering of certain DSGL goods and technology	✓	* ✓	* ✓	* ✓
'Uncontrolled' provisions (covering items not on the DSGL)			Applies to DSGL ...			
EXISTING	WMD Act	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	Customs Act (112BA)	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

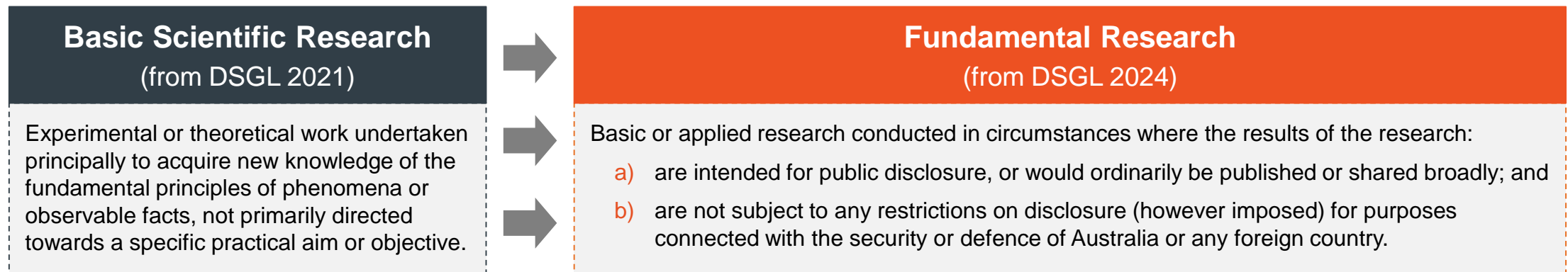


Week 3 – Part 1: Fundamental Research

Fundamental Research – What has changed?

There is an exception for **Fundamental Research** within Australia's export controls.

- Legislative changes on 1 September 2024 **expanded this exception** from 'basic research' only to 'basic and applied research' – this has **widened the net** for research activities to be considered exempt from controls.
- This new definition was arrived at **in collaboration** with the higher education and research sector.



Note: the meaning of 'basic' and 'applied' are taken from the [Organisation for Economic Co-operation and Development Frascati Manual 2015](#).

- » Basic research: experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view.
- » Applied research: original investigation undertaken in order to acquire new knowledge. Applied research is directed primarily towards a specific, practical aim or objective.



Fundamental Research – How does it work?

Fundamental Research **operates as a ‘de-control’**, meaning associated technologies are **not considered ‘DSGL technology’** for the purposes of all export control offences.

DSGL technology means specific information necessary for the development, production or use of a product. This information takes the form of ‘technical data’ or ‘technical assistance’.

- Technical assistance: includes instruction, skills, training, working knowledge and consulting services and may involve the transfer of ‘technical data’.
- Technical data: includes blueprints, plans, diagrams, models, formulae, algorithms, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

Controls do not apply to technology produced in the course of, or for the purposes of, Fundamental Research

- Relevant to **all export control offences** relating to ‘DSGL technology’ in the DTC Act and Customs (PE) Regs.
- **Other de-controls** in the DSGL relevant to definition of ‘DSGL technology’ include (but are not limited to):
 - Information in the public domain
 - The minimum necessary information for patent applications (*except for Category 0 – Nuclear*)
 - The minimum necessary information for the installation, operation, maintenance (checking) and repair, of those items which are not controlled or whose export has been authorised (*except for Category 0 – Nuclear*)



Fundamental Research – When can it apply?

Consider three main questions to determine if Fundamental Research applies:

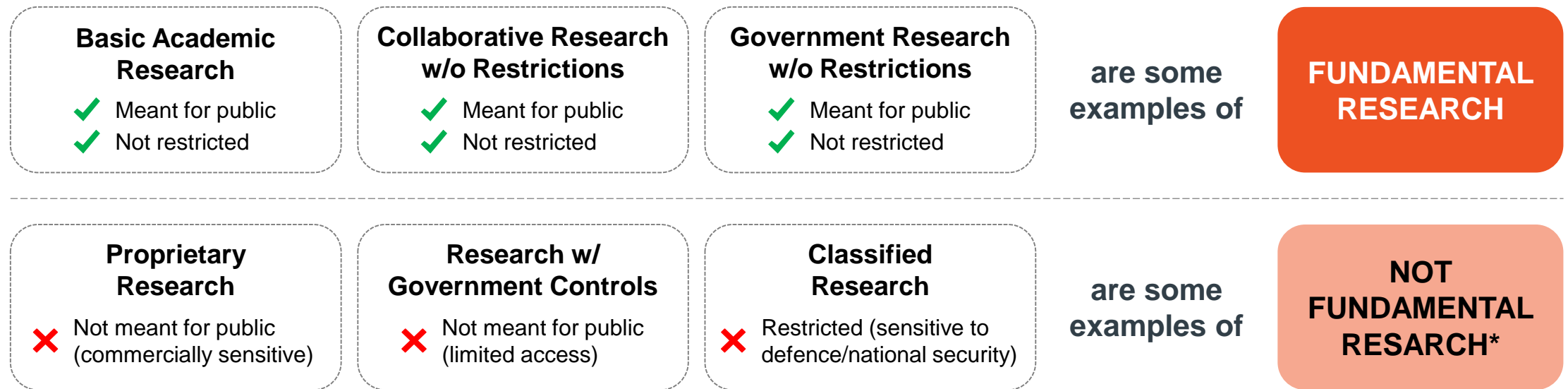


**Anything else does not qualify as Fundamental Research
 (i.e. might be DSGL technology, and therefore subject to controls)**



General Guidance on Research Types

The nature of the research often indicates if it is **meant for the public AND not restricted in any way** – both must be met to satisfy Fundamental Research.



* Permits may still not be necessary – consider if other de-controls or legislative exceptions apply



Examples – Fundamental Research

The **circumstances and context unique to any research** will ultimately determine if it satisfies the Fundamental Research definition.

Fundamental Research

Open-Access Research on Cybersecurity

A university research team studies general cybersecurity principles and techniques that could enhance both civilian and military systems. The research is published in open-access journals and presented at international conferences without any restrictions.

Qualifies as Fundamental Research

The research is intended to be published and shared broadly, and there are no restrictions on dissemination.

Unclassified Basic Research on Materials

A university conducts unclassified basic research on new composite materials that could potentially be used in military applications, such as lightweight armour. The research is funded by a government agency, but there are no restrictions on publication or dissemination of the results. The results are intended to be published.

Qualifies as Fundamental Research

The research is unclassified and there are no restrictions on publication or dissemination.

Not Fundamental Controlled Research

Proprietary Research on Military Technology

A university lab collaborates with a defence contractor on developing a new radar system for military aircraft. The contract includes clauses that restrict the publication of research results and require the contractor's approval before any dissemination.

Does Not Qualify as Fundamental Research

The research has publication restrictions imposed by the defence contractor sponsor, which disqualifies it.

Classified Research on Defence Systems

A university researcher is involved in a classified project to develop advanced targeting systems for military drones. The project is funded by Defence and is subject to security classification, restricting publication and dissemination of the research results.

Does Not Qualify as Fundamental Research

The research is classified and subject to restrictions on publication and dissemination, which disqualifies it.

Government-Funded Research w/ Access Controls

A university receives funding from Defence to study advanced propulsion systems for military vehicles. The funding agreement includes specific restrictions on who can access the research results and how they can be disseminated.

Does Not Qualify as Fundamental Research:

This research is subject to access and dissemination controls imposed by Defence, which disqualifies it.

Research with Export-Controlled Technology

A university researcher works on a project involving the development of encryption algorithms specifically designed for military communications. The technology is listed on the U.S. Munitions List (USML) and subject to ITAR controls.

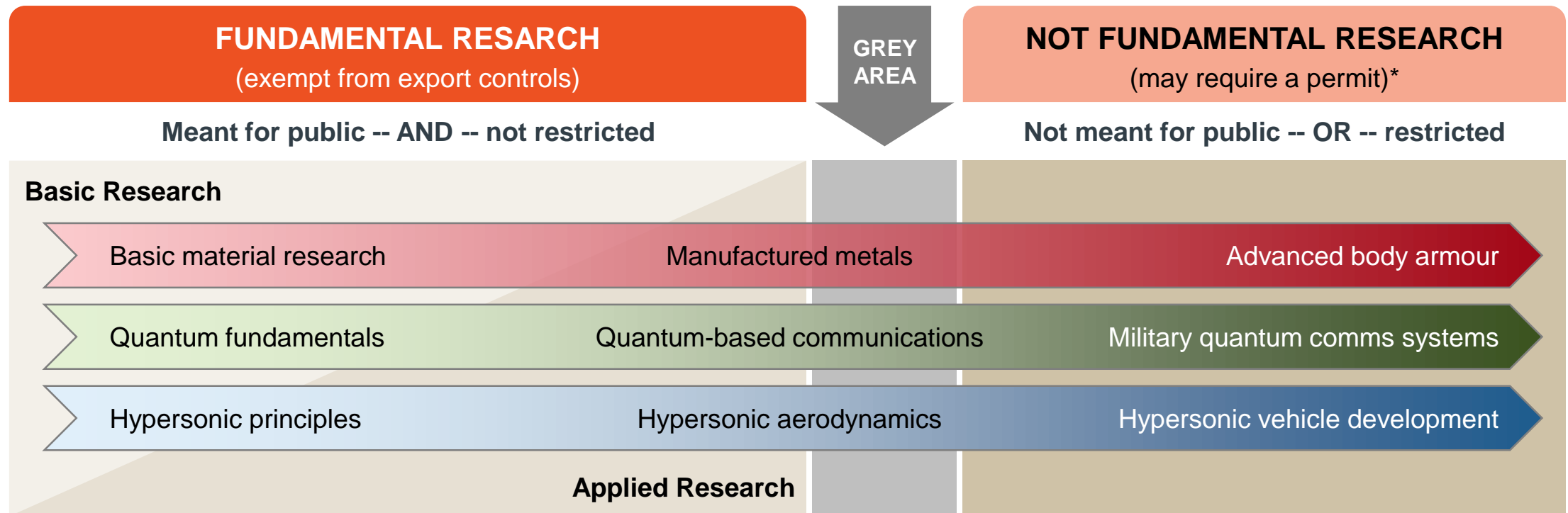
Does Not Qualify as Fundamental Research

The research is subject to disclosure restrictions for purposes connected with security/defence of a foreign country (via ITAR controls), which disqualifies it.



Evolution of Research

Consider the **threshold for Fundamental Research** as research develops over stages.



If you are unsure: Speak with your compliance team | Use self-help tools | Reach out to DEC

* Additional factors to consider include: other further de-controls; the scope of any export control offences; legislative exceptions



Other Considerations

Additional areas of interest around Fundamental Research involve:

Record Keeping

Record keeping is not required for activities involving technology that does not constitute 'DSGL technology' due to falling within the Fundamental Research definition.

Timelines for Publishing

There is no limit to the length of time regarding an intent to publish when considered under Fundamental Research. However, restrictions on publishing – even if for a limited time period – would disqualify the technology from Fundamental Research until the restrictions have lapsed.

Supply via Various Materials

e.g. Conference posters, slide shows, presentations – to determine if the materials you intend to share actually contain 'DSGL technology', consider if the technology has been produced in the course of, or for the purposes of, Fundamental Research.

**Permits may be required for activities that involve DSGL technology.
Consider other exceptions that may apply to your circumstances.**



Week 3 – Part 2: Nationality

Defining 'Nationality'

An **Australian person** and **foreign person** have specific definitions under the *Defence Trade Controls Act 2012*.

Australian person means:

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

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

What does this mean?

Any Australian citizen or permanent resident is considered an 'Australian person', regardless of other citizenships held or if they live in another country.

Any individual, entity or organisation that does not meet the definition of an 'Australian person' is considered a 'foreign person'.

Citizenship, permanent residency, or country of incorporation is also used to determine what country a foreign person is considered to be from (e.g. AUKUS, Five Eyes, FCL)..



IMPORTANT

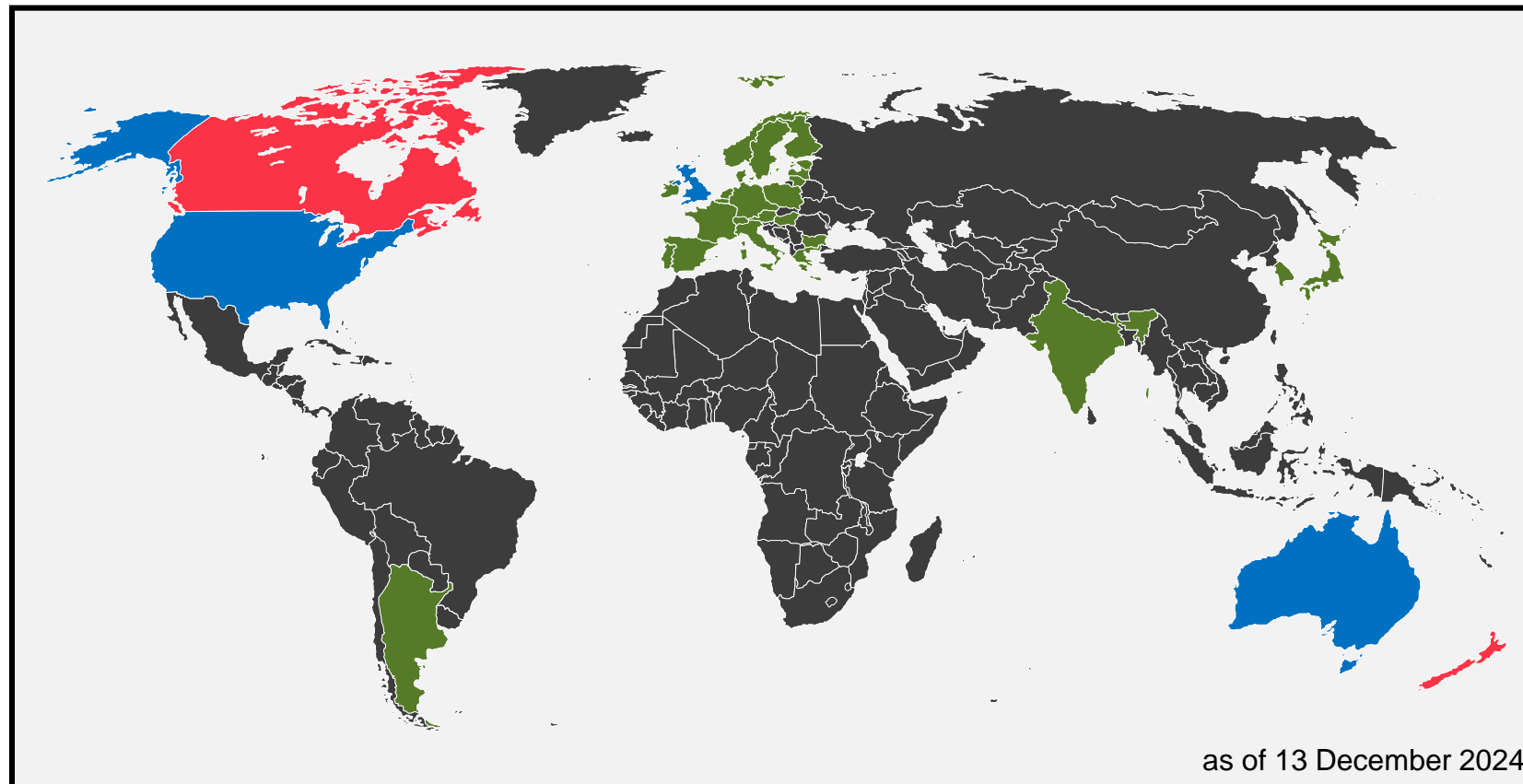
These definitions are specific to Australia's export control laws. Other restrictions / sanctions / definitions may be relevant depending on individual circumstances under other regulatory frameworks.

* Meaning provided within the *Australian Citizenship Act 2007*



Nations with Potential Exemptions

Various exemptions and exceptions are available based on the **AUKUS** and **Five Eyes** partnerships, and the **Foreign Country List**.



FOREIGN COUNTRY LIST (FCL)

FIVE EYES

AUKUS

Australia 
 United Kingdom 
 United States 

Canada 
 New Zealand 

Argentina 
 Austria 
 Belgium 
 Bulgaria 
 Czech Republic 
 Denmark 
 Estonia 
 Finland 
 France 
 Germany 
 Greece 
 Hungary 
 India 
 Ireland 
 Italy 
 Japan 
 Latvia 
 Lithuania 
 Luxembourg 
 Netherlands 
 Norway 
 Poland 
 Portugal 
 South Korea 
 Spain 
 Sweden 
 Switzerland 



Foreign Country List

The Foreign Country List (FCL) is legislative instrument made by the Minister for Defence - it serves as the **basis for certain exemptions** under Australia's export control laws..

Foreign Country List [as of 14 August 2024]: Austria, Belgium, Bulgaria, Canada, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, UK, US (and recently added: Argentina, Estonia, India, Latvia, Lithuania, Republic of Korea)

FCL-Based Exemptions

Refer to legislation for full details

- **Section 10:** intracompany supplies to FCL employees in the course of their duties.
- **Section 10A:** recipients who are citizens / permanent residents / corporate entities / governments / government authorities from an FCL country.
- **Section 10B:** supplies occurring wholly within, from, or to an FCL country (only Part 2 DSG).
- **Section 10B:** intracompany supplies to FCL employees in the course of their duties.
- **Section 10C:** intracompany services to FCL employees in the course of their duties.

The Minister for Defence determines which countries to include on the FCL based on if:

- They are participants of all four multilateral export control regimes;* or
- It is in the interests of Australia's national security, foreign relations or economic well-being.

*	
Australia Group	Nuclear Suppliers Group
Missile Technology Control Regime	Wassenaar Arrangement



Close: Wrap-Up

Penalties

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 Dive Series

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
Mon 2 Dec	Industry (Info Session)
Tue 3 Dec	Higher Education & Research (Info Session)
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**
<https://www.defence.gov.au/business-industry/exporting>
3. **Use the MADE portal self-help tool and guidance materials**
4. **Email exportcontrols@defence.gov.au**
5. **Call 1800 333 362 (1800 DEFENCE) 'Option 4'**
between 8.30-16.30 AEST

**DEFENCE
EXPORT
CONTROLS**





This document is designed to assist you in understanding Defence Export Control's regulatory framework. It may include some generalisations about the law.

Defence does not guarantee the accuracy, currency or completeness of any information contained in this document. Some provisions of the law referred to have exceptions or prerequisites, not all of which may be described here.

This document is not legal advice, nor intended to be legal advice. Your particular circumstances and activities must be taken into account when determining how the law applies to you, including other regulatory obligations beyond Defence Export Controls.