



Australian Government  
Defence



# DEFENCE EXPORT CONTROLS

DEEP DIVES

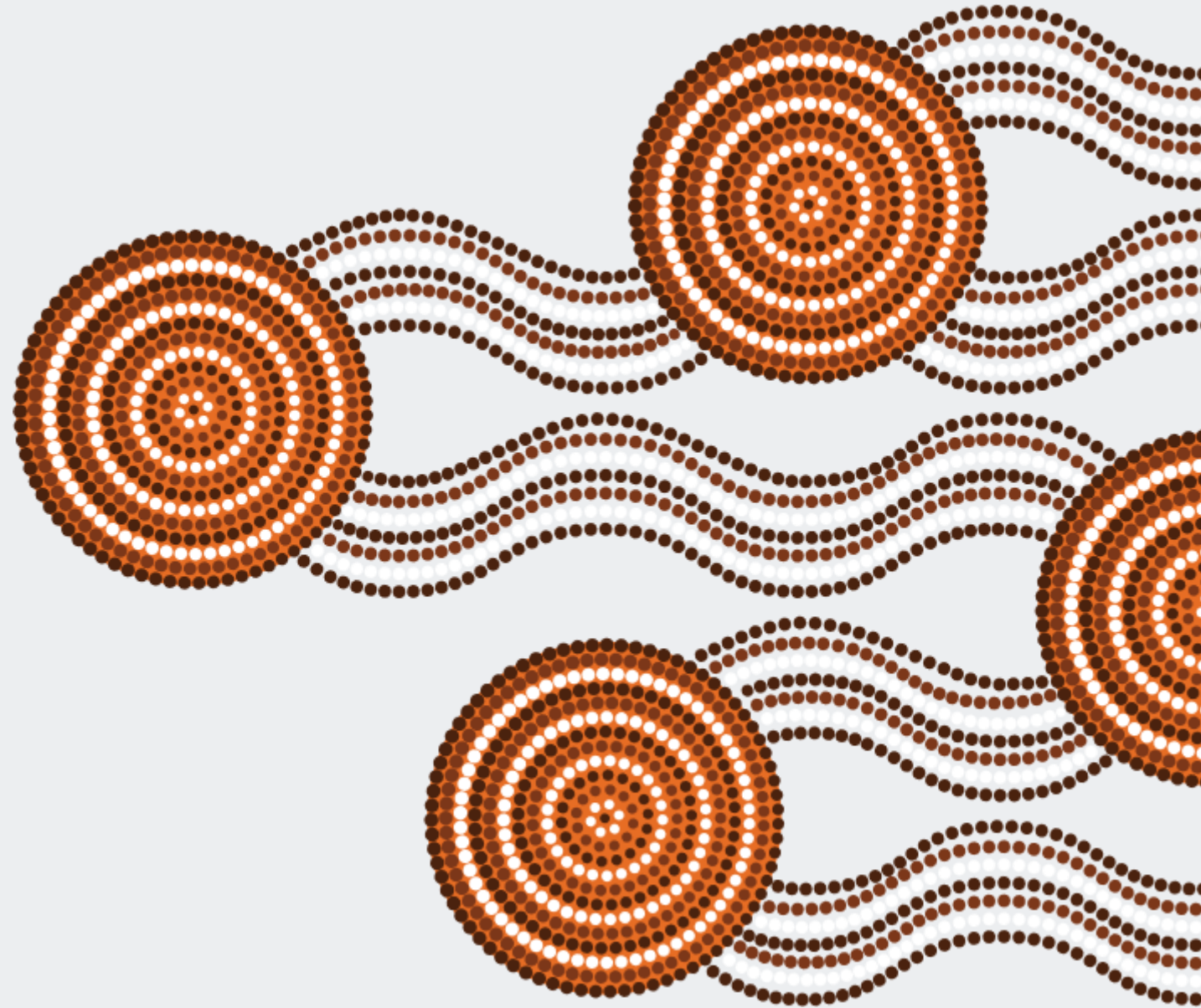
**Industry Sector**

Monday, 2 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.



# Welcome



Australian  
**BORDER FORCE**



**AFP**

# Agenda

Description	Speaker(s)	Time
Opening Remarks	MC	5 mins
<p><b><u>Session 1 – Defence Export Controls</u></b></p> <ul style="list-style-type: none"> <li>• Deep dive into the changes to Australia’s Defence export controls</li> </ul>	Emily Brissenden (DEC)	35 mins
<p><b><u>Session 2 – Government Partners</u></b></p> <ul style="list-style-type: none"> <li>• <b>Australian Sanctions Office</b>   Dept Foreign Affairs and Trade</li> <li>• <b>Australian Border Force</b>   Dept of Home Affairs</li> <li>• <b>Crime Command</b>   Australian Federal Police</li> <li>• <b>Safeguarding Australia’s Military Secrets</b>   Defence</li> </ul>	Michael McGillion (ASO) Sam Bowden (ABF) Jim Rowe (AFP) Carlos Grande (SAMS)	45 mins
Close	MC	5 mins



# Introduction to Defence Export Controls

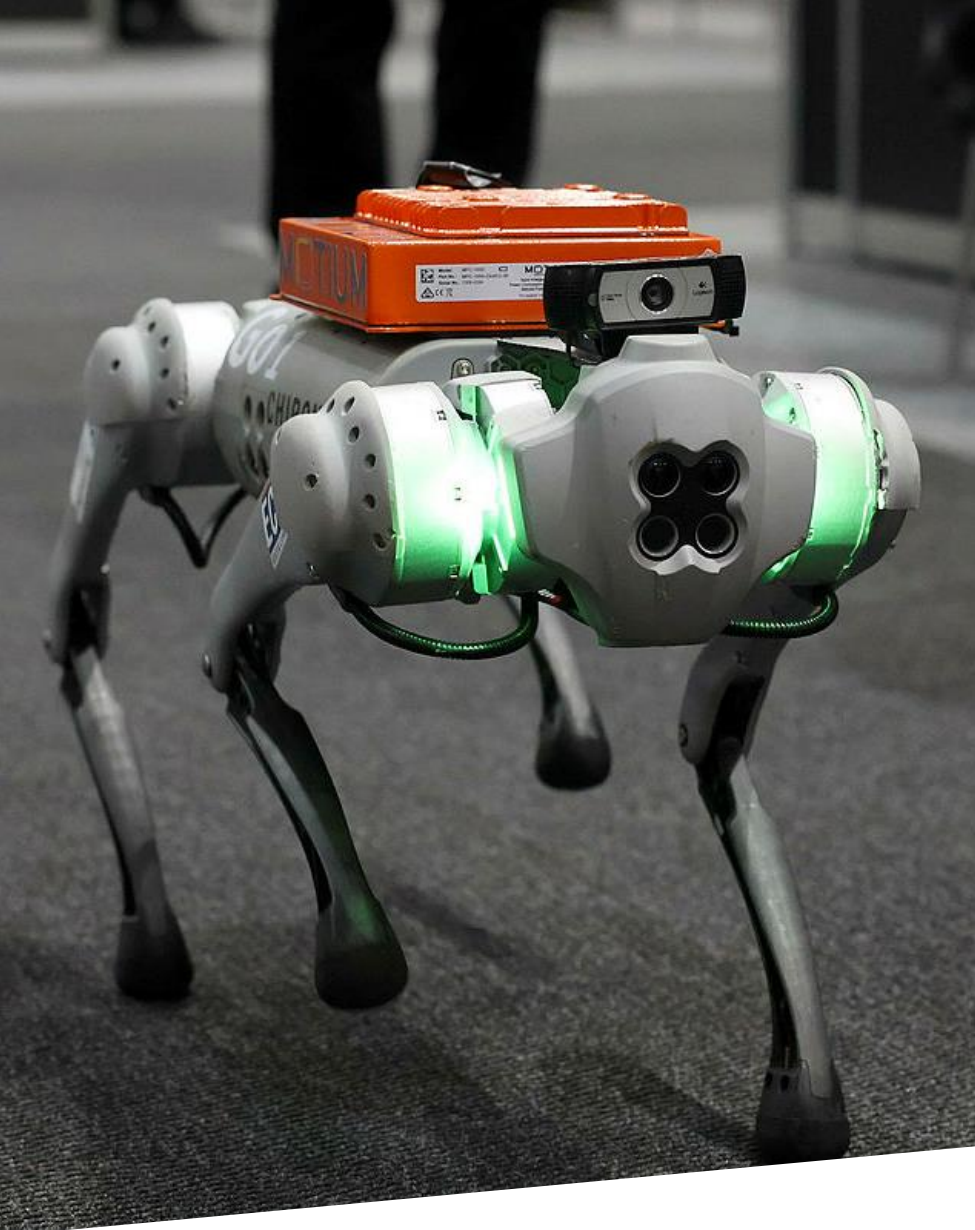
---

# 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>	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





# AUKUS Licence-free Environment

---

# Overview of the Licence-free Environment

Under the licence-free environment many military and dual-use goods, technologies and services can be **transferred without permits** between AUKUS partners.

- **In July 2023**, Australian, US and UK leaders **committed to streamlining defence trade** among AUKUS partners through the creation of a trilateral export licence-free environment.
- **On 1 September 2024**, this **licence-free environment was enabled** by legislative changes implemented by Australia, the US and UK.
- **As a result**, a 'national exemption' for the US and UK is now available for the **Customs (PE) Regulations** (Section 13E) and **DTC Act** (Sections 10, 10A, 10B, 10C, 15).



## Impact on defence trade for Australia

The licence-free environment is now available to use for:

**~900**

### export permits

to the US and UK previously required under Australian law (valued at \$5b / year)



**70%**

### defence exports

from the US to Australia subject to International Traffic in Arms Regulations (ITAR)



**80%**

### defence trade

from the US to Australia subject to Export Administration Regulations (EAR)



**~200**

### export permits

previously required for defence exports from the UK to Australia (valued at \$129m / year)



# Using the Licence-free Environment

The following **criteria must all be met** to make use of the licence-free environment.













<b>Registration and Certification</b>	The exporter or supplier has a Defence Export Controls Registration Number (DCRN) and has enrolled via the <a href="#">My Australian Defence Exports (MADE) portal</a> as an AUKUS Authorised User. <i>Note: if activity is subject to ITAR, the exporter or supplier must also be a US-certified 'Authorized User'.*</i>
<b>End-user</b>	The export, supply or provision is to an Australian / UK / US citizen, permanent resident, corporation, government, or government authority. <i>Note: if involving ITAR, the export, supply or provision must be to another US-certified 'Authorized User'.*</i>
<b>Location</b>	The export, supply is to, or the services are received at, a place in Australia / US / UK.
<b>Excluded Lists</b>	The DSGE goods or technology are not on an excluded list (for Australia this is the <a href="#">Excluded DSGE Goods &amp; Technologies List</a> or <a href="#">Australian Military Sales Program items</a> ).
<b>Pre-notification</b>	DEC has been notified prior to the export or supply occurring via the <a href="#">MADE portal</a> . <i>Note: this is only required for exports or supplies out of Australia (e.g. Customs Regs 13E / DTC Act s10 activities).</i>

\* further information on US-certified 'Authorized Users' and their ITAR exemption access is available on the DEC website ([Access Types factsheet](#))



# Example Scenarios

Your circumstances will influence if – and what level of – access to the AUKUS licence-free environment will benefit you.

Options \ Scenarios	Transferring goods or technology not on the DSGL	Export/supply to countries other than US / UK	Export/supply to US / UK <u>not involving</u> ITAR controlled items	Export/supply to US / UK <u>involving</u> ITAR controlled items	Receiving ITAR controlled items from US / UK
Apply for DEC Permit Only	N/A	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Consider if exemptions apply</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Consider if exemptions apply</div>	 <div style="border: 1px dashed red; border-radius: 10px; padding: 5px; display: inline-block;">Need relevant ITAR approval from US</div>	 <div style="border: 1px dashed red; border-radius: 10px; padding: 5px; display: inline-block;">Need relevant ITAR approval from US</div>
Use Licence-free Environment (Australian exemption)	N/A	 <div style="border: 1px dashed red; border-radius: 10px; padding: 5px; display: inline-block;">Trade not occurring between AUKUS countries</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Consider other eligibility criteria</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Does not cover ITAR</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Does not cover ITAR</div>
Use Licence-free Environment (ITAR exemption)	N/A	 <div style="border: 1px dashed red; border-radius: 10px; padding: 5px; display: inline-block;">Trade not occurring between AUKUS countries</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Not required if ITAR not involved</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Required to <u>transfer</u> ITAR licence-free</div>	 <div style="border: 1px dashed green; border-radius: 10px; padding: 5px; display: inline-block;">Required to <u>receive</u> ITAR licence-free</div>

**Note on**   Persons/entities who are certified to access the **ITAR exemption** will have already been registered with DEC to access the **Australian exemption**



## New Offences – Section 10A / 10B / 10C

---

# New Offences in the DTC Act

**Three new offences** have been introduced to the *Defence Trade Controls Act 2012*.

<i>Defence Trade Controls Act 2012 – New Offences</i>	Applies to DSGL ...			
	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
<b>10A:</b> 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



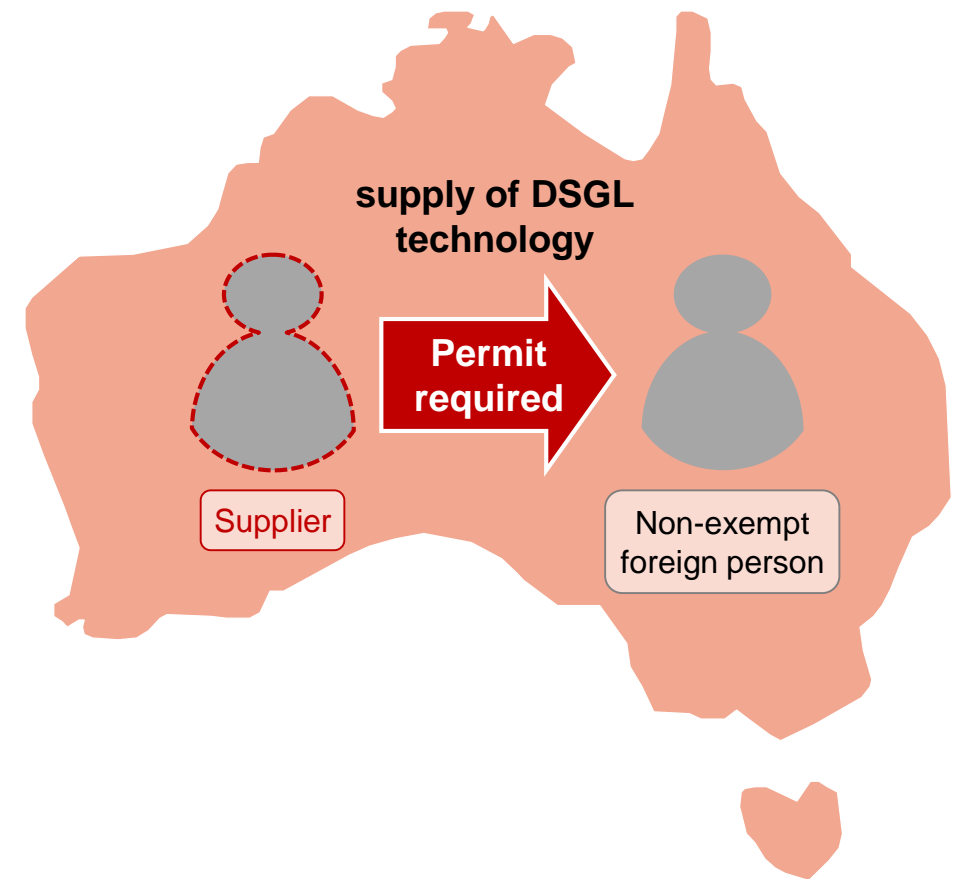
# Section 10A Overview

Applies to DSGL ...	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
	YES	YES	YES	YES

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

1. **A person supplies** (incl. provision of access)
2. **DSGL technology** (not goods)
3. **to a ‘non-exempt’ foreign person**
4. **within Australia**

**Without a permit from DEC**





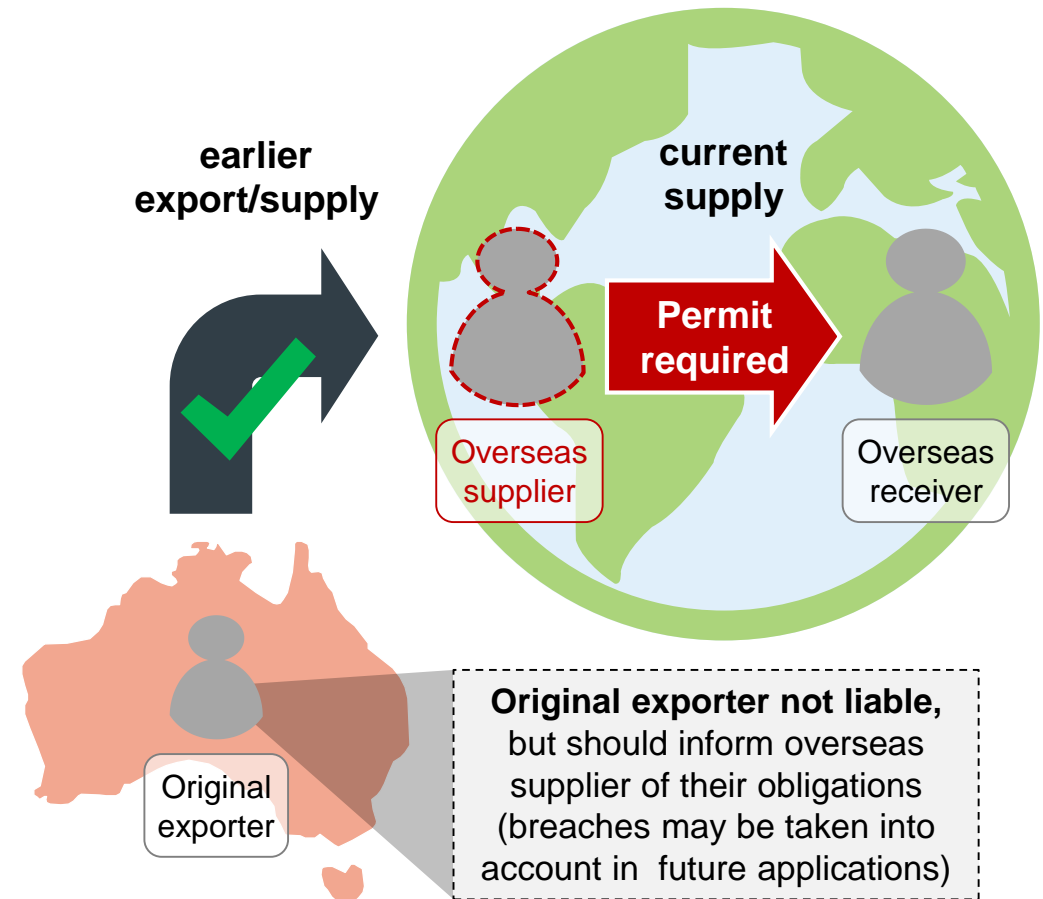
# Section 10B Overview

Applies to DSGL ...	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
	YES	YES	YES	NO

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 from DEC**



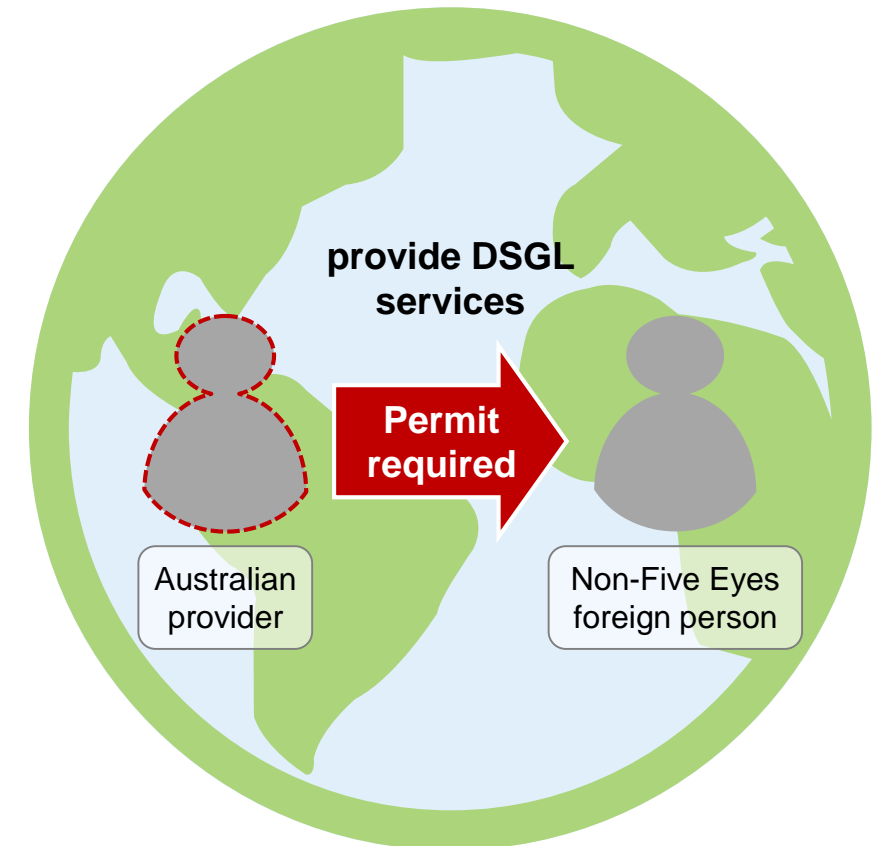
# Section 10C Overview

Applies to DSGL ...	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
	YES	NO	NO	NO

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 (excl. Five Eyes)

**Without a permit from DEC**



# General Guidance on Exceptions

Each new offence has various exceptions that **remove the need for a permit**.

Description	Section 10A	Section 10B	Section 10C
<b>Fundamental Research (DSGL Technology)</b>	<b>De-Control:</b> 4 (def <sup>n</sup> ) + DSGL 3.9	<b>De-Control:</b> 4 (def <sup>n</sup> ) + DSGL 3.9	<b>De-Control:</b> 4 (def <sup>n</sup> ) + DSGL 3.9
<b>Defense Trade Cooperation Treaty</b>	<b>Exception:</b> 10A(4) + Reg 7	<b>Exception:</b> 10B(5) + Reg 7	<b>Exception:</b> 10C(3) + Reg 7
<b>Australian Government Employees</b>	<b>Exception:</b> 10A(6)	<b>Exception:</b> 10B(7)	<b>Exception:</b> 10C(6)
<b>Covered Security Clearances</b>	<b>Exception:</b> 10A(7)	<b>Exception:</b> 10B(8)	<b>Exception:</b> 10C(7)
<b>Build-to-Print</b>	<b>Exception:</b> 10A(7A) + Reg 7A	--	--
<b>FCL Involvement</b>	<b>Exception:</b> 5C(1C)	<b>Exception:</b> 10B(8B)	--
<b>Foreign Work Authorisation (SAMS)</b>	<b>Exception:</b> 10A(8) + Reg 7B	--	<b>Exception:</b> 10C(2A) + 10C(2B)
<b>Original Equipment Manufacturer (OEM)</b>	--	<b>Exception:</b> 10B(8A)	--
<b>Elapsed Time Period</b>	--	<b>Exception:</b> 10B(8C) + Reg 7C	--
<b>Supplies from AUKUS Partners</b>	--	<b>Exception:</b> 10B(9) + Reg 7D	--
<b>Intracompany</b>	--	<b>Exception:</b> 10B(6)	<b>Exception:</b> 10C(4)
<b>Grandfathering (prior 1 September 2024)</b>	--	<b>Exception:</b> 10B(8C)	<b>Exception:</b> 10C(7A)
<b>Five Eyes Recipients</b>	--	--	<b>Exception:</b> 5C(2A)
<b>Maintenance Services</b>	--	--	<b>Exception:</b> 10C(5)



# Industry Case Studies

These changes may be **relevant to industry** in different ways (including but not limited to):

## Australian Partners

Company A (based in Australia) has partnered with Company B.

Company A intends to supply DSGL technology (needed to produce a controlled component of a DSGL good) to foreign persons of Company B located in Australia.

### Section 10A may be relevant

- Build-to-print exception could apply if limited to the medium reasonably necessary technology, and does not inform overall design production
- No permit required if Company A supplies only to FCL representatives from Company B (if technology not on ETL / AMSP)
- Permit otherwise required (unless other exceptions apply)

## Supplies Made From Overseas

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.

### Section 10B may be relevant

- Earlier export/supply must have first required a permit
- Only applies if the DSGL Part 2 goods are on Very Sensitive / Sensitive list
- If re-supply made within the same non-FCL country or to another non-FCL country, a permit may be required

## Company Services

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

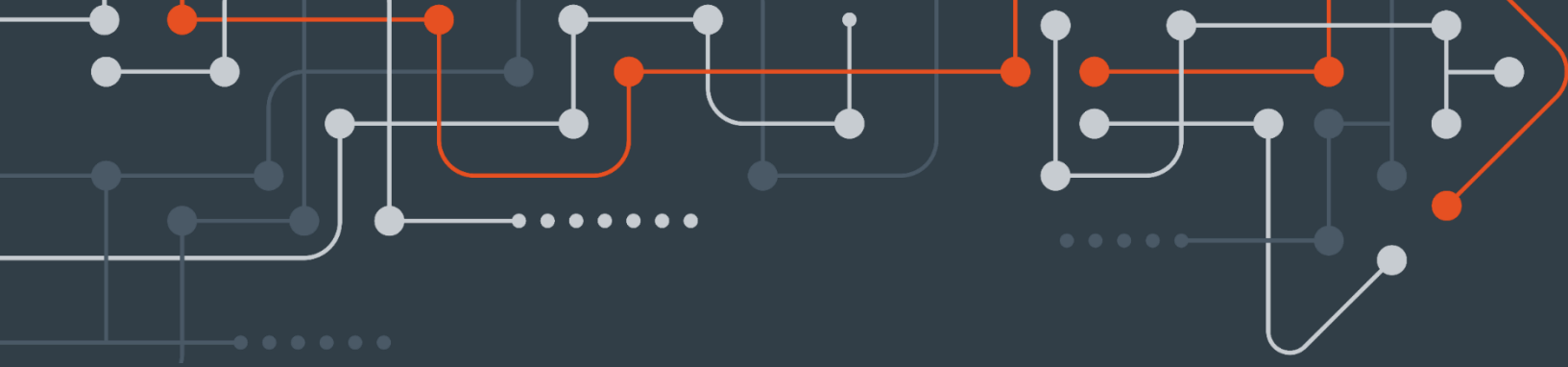
That Australian company has now been contracted by their foreign customer to provide them with training regarding maintenance and use of those Part 1 DSGL goods.

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

### Section 10C may be relevant

- 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

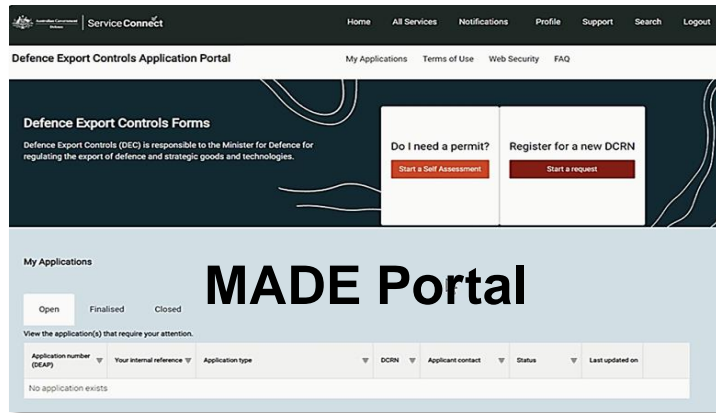




**Close**

---

# In Summary



**Depending on your circumstances, you may now require a permit** when conducting an activity under Section 10A, 10B, or 10C of the DTC Act.

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



## Things to remember

- **New offences introduced, bringing Australia in-line with US and UK**
- **AUKUS licence-free environment available; many exceptions for FCL countries**
- **Expanded definition for Fundamental Research**
- **Consider full range of exceptions before applying for a permit**
- **Maintain records – even when relying on an exception**



# 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*





# 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](mailto:exportcontrols@defence.gov.au)**
- 5. Call 1800 333 362 (1800 DEFENCE) 'Option 4'**  
between 8.30-16.30 AEST

**DEFENCE  
EXPORT  
CONTROLS**







## Session 2: Government Partners

---

# Speakers



**1. Mr Michael McGillion**  
**Australian Sanctions Office**  
Dept. Foreign Affairs and Trade



**2. Mr Sam Bowden**  
**Australian Border Force**  
Dept. Home Affairs



**3. Supt Jim Rowe**  
**Australian Federal Police**  
Dept. Foreign Affairs and Trade



**4. Mr Carlos Grande**  
**Safeguarding Australia's Military Secrets**  
Dept. Defence





Australian Government

Department of Foreign Affairs and Trade

# Australian Sanctions Office

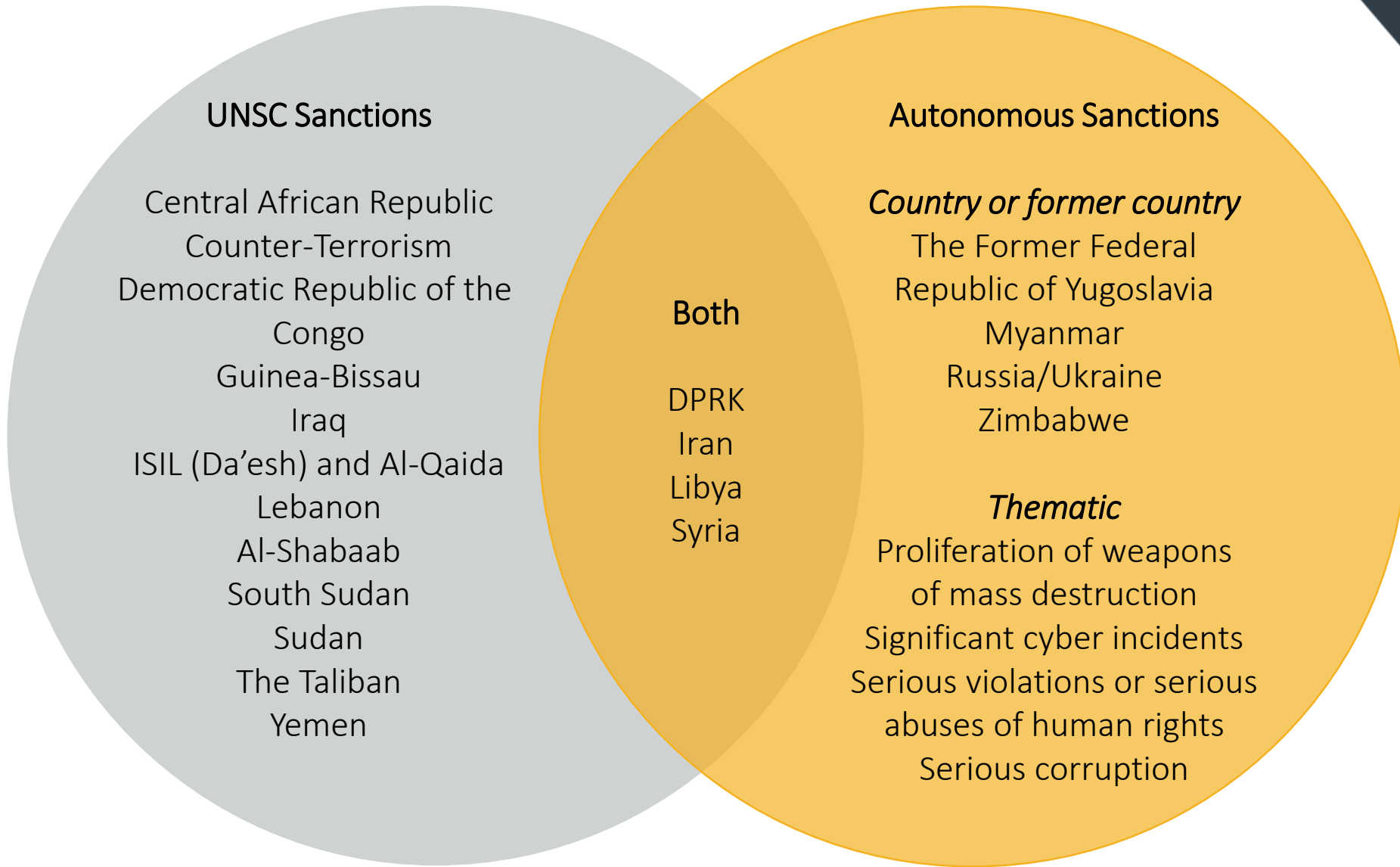
Date: December 2024

DFAT.GOV.AU

# Purpose of sanctions

Sanctions are measures not involving the use of armed force to:

- **Condemn** or **respond** to a situation of international concern
- **Prevent, limit or end the adverse impacts** of a situation of international concern
- **Deter** those who would contribute to a situation of international concern in the future



# When do Australian sanctions laws apply?

- Any activity in Australia
- Any activity involving an Australian person or body corporate
- Any activity involving an Australian vessel or aircraft

Note: bodies corporate are strictly liable, but reasonable precautions and due diligence are a defence



# Types of sanctions

- Restrictions on dealings with particular persons and entities
- Restrictions on exporting or importing certain goods
- Restrictions on providing certain services
- Restrictions on commercial activities
- Travel bans on particular persons

# Sanctions permits

- Can take three months or more
- What can be authorised depends on the relevant framework
- Not an insurance policy – only for matters that would be a contravention
- Might be unnecessary if adequate risk mitigation is in place to prevent a sanctions offence occurring

Calendar year	Total permits issued	Permits relating to Russia/Ukraine
2021	64	37
2022	113	85
2023	58	24
2024 (to 30 Oct 2024)	18	13



# Outreach and monitoring

- In 2024-25 DFAT was allocated \$23.3 million over four years to improve sanctions compliance and enforcement
- We are finalising several industry-specific guidance notes and a sanctions toolkit to provide more tailored guidance to industry on sanctions risks
- Feel free to get in touch for general advice about each sanctions framework



# Key risks for industry

- Consider the detail of import and export bans for Russia – both as they are now and whenever they are updated
- Be alert to the risk of circumvention activity
- Consider indirect connections to designated entities and intangible assets



**Australian Government**

**Department of Foreign Affairs and Trade**

**DFAT.GOV.AU**



Australian  
**BORDER FORCE**

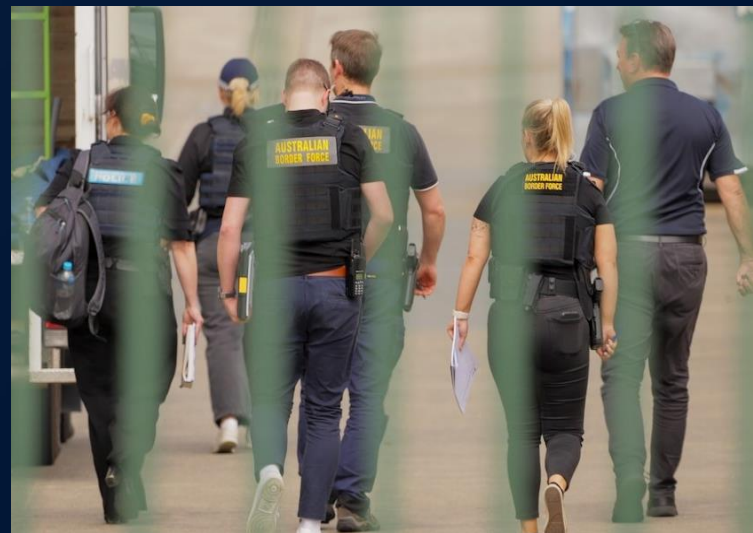
# Counter Proliferation

## *Export Controls and Border Obligations*

Monday, 2 December 2024

Inspector Sam Bowden

Customs Enforcement  
Australian Border Force



# Australian Border Force

Facilitate the legitimate movement of goods and people; and to protect the integrity of Australia's border.

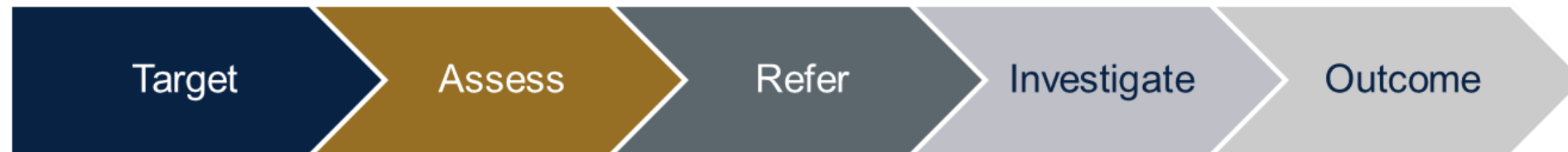
Our vision is to be a global leader in border law enforcement and a trusted partner that helps build a safe, secure and prosperous Australia.

## Counter Proliferation

- **End-to-end capability:** leads generation, analysis, targeting, detection, investigation and prosecution
- **Multi-disciplinary:** function that enforces a range of import and export controls in response to identified threats and risk
- **Fully integrated:** intelligence, regulation and enforcement partners

# What does Counter Proliferation do?

**Mission:** to combat the illicit movement of military and dual-use goods and entities of proliferation concern moving across the border



**Targeting:** identification, profiling and targeting of goods and entities of proliferation concern, and preparation of referrals

**Governance and Operational Analysis:** stakeholder liaison with domestic and international partners, and all-source analysis to operationalise data and information for opportunities and investigations

**Investigations:** viability assessments, investigation planning, operational activity, determination of outcome and treatment options



**Australian  
BORDER FORCE**

# Partners

# Domestic Partners

## Policy



Australian Government

Department of Foreign Affairs and Trade



Australian Government

Attorney-General's Department

## Intelligence



Australian Government

Department of Home Affairs

**NIC** National Intelligence Community



Australian Government

AUSTRAC

## Regulation and Permits



Australian Government

Defence



Australian Government

Department of Industry, Science and Resources



Australian Government

Australian Safeguards and Non-proliferation Office



Australian Government

Department of Climate Change, Energy, the Environment and Water



Australian Government

Australian Sanctions Office



## Enforcement



AUSTRALIAN CRIMINAL INTELLIGENCE COMMISSION





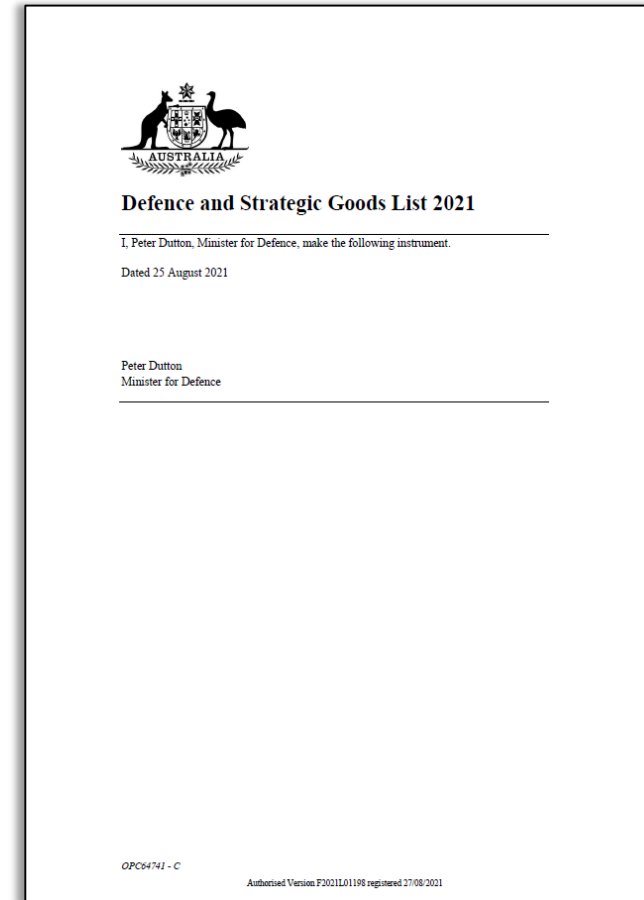
**Australian  
BORDER FORCE**

# Legislation and Enforcement

# Border Legislation

- ***Customs Act 1901***
  - Section 112BA Military End Use provision
- ***Customs (Prohibited Exports) Regulations 1958***
  - Autonomous Sanctions – Regulations 11, 11A and 11B
  - Defence and Strategic Goods List – Regulation 13E
- ***Customs (Prohibited Imports) Regulations 1956***
  - Radioactive Material – Regulation 4R
  - Goods under autonomous sanctions – Regulation 4XA
  - Chemical Weapon Precursors – Regulation 5J
- ***Weapons of Mass Destruction (Prevention of Proliferation) Act 1995***
  - Prohibition of dual-use items

# Defence and Strategic Goods List (DSGL)



# 'Catch all' Controls



## Customs Act 1901

No. 6, 1901

Compilation No. 178

- The Minister for Defence may prohibit the export of non-DSGL listed goods that may contribute to a military end-use that would prejudice Australia's security, defence or international relations
  - Defence notifies exporters by issuing a prohibition notice

- The Minister for Defence may also prohibit the supply or export of goods and/or provision of services that may assist in the development, production, acquisition or stockpiling of **nuclear, biological, or chemical weapons** or missiles capable of delivering such weapons



## Weapons of Mass Destruction (Prevention of Proliferation) Act 1995

No. 38, 1995

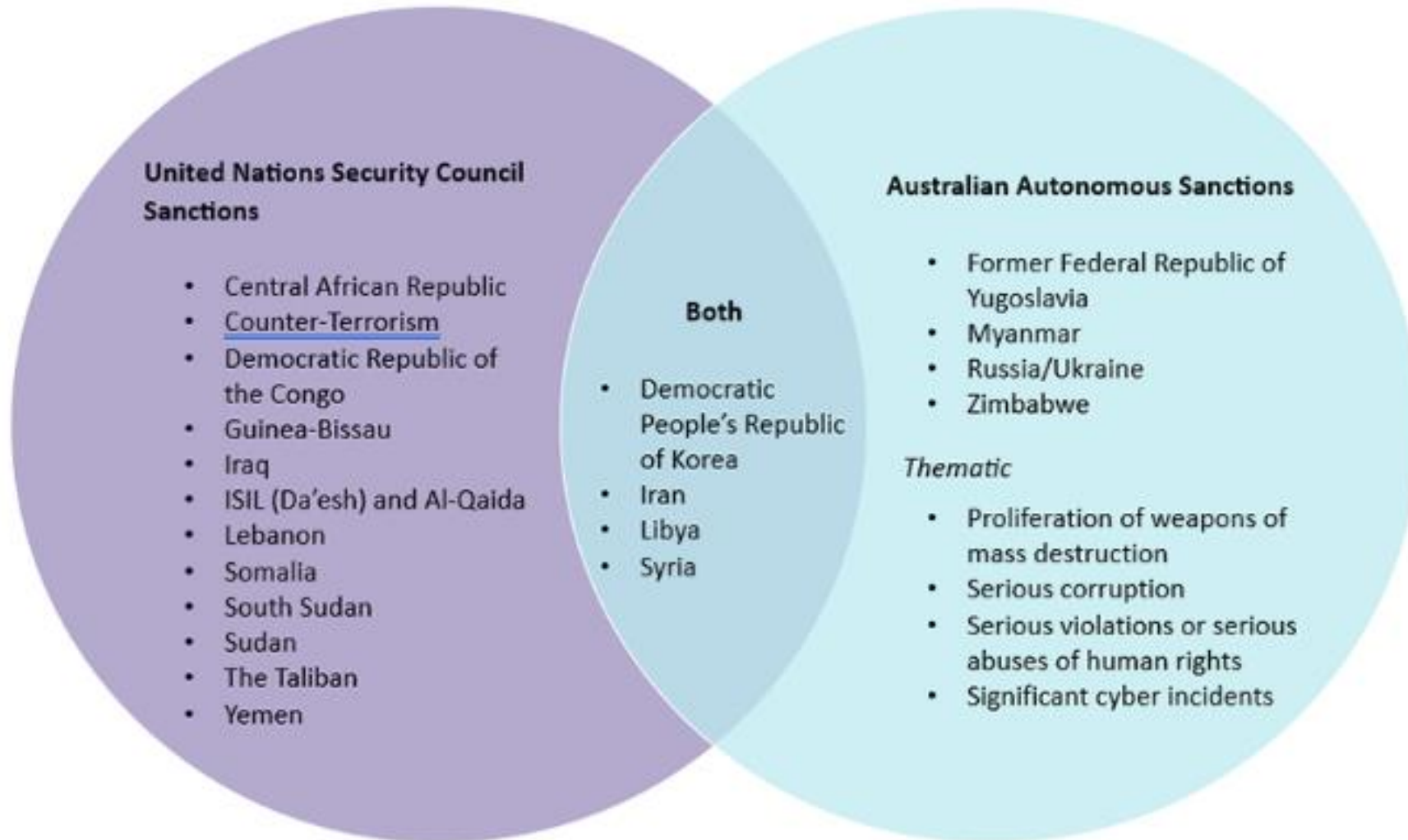
Compilation No. 8

Compilation date: 6 November 2018

Includes amendments up to: Act No. 124, 2017

Registered: 13 November 2018

# Sanctions Enforcement



# Enforcement Approach

## Threshold for investigation can include:

- Assessed as a complex matter
- Risk at the border
- Impact on Australia
- Malign intent suspected
- Repeat offender
- May require warrant activity

## Treatment options:

- Warning letters
- Infringement notice(s):
  - Individual – \$4,950
  - Company – \$14,850
- Prosecution(s):
  - Individual – 10 years imprisonment and/or \$825,000
  - Company - \$4,125,000



Additional penalties as a result of investigation outcomes could lead to the forfeiture of goods and cancellation of visas.



**Australian  
BORDER FORCE**

# Challenges

# Challenges

## **Timeframes:**

- Accuracy of export declarations (i.e. AHECC code)
- Time export declaration lodged prior to proposed date of departure

## **Technology advancement:**

- Manual process to assess export declarations
- Greater analysis required against dual-use items

## **International environment:**

- Changes in global environment





**Australian  
BORDER FORCE**

# Thank you

If you have any questions, please don't hesitate to  
contact the ABF at [trade.enforcement@abf.gov.au](mailto:trade.enforcement@abf.gov.au) or  
1800 061 800



# AFP

## Defence Export Controls

## Industry Virtual Information Session

**James Rowe**  
Superintendent – Economic Corporate Crime & Corruption  
Crime Command

# Who we are

The Australian Federal Police (AFP) is Australia’s national policing agency. Our role is to protect Australians and Australia’s interests from serious criminal threats. We reflect the Australia we serve; diverse and inclusive, fair-minded and formidable. Intelligent interaction ensures maximum impact on the criminal environment for a safer Australia and beyond.

**We are an agency like no other.**

---

## VISION

Policing for a safer Australia

## MISSION

As Australia’s national policing agency, we protect Australians and Australia’s interests

## GOAL

Maximum impact on the criminal environment

## VALUES

We value fairness, trust, respect, accountability, integrity, commitment and excellence

### OUTCOME 1: National and International Policing

Reduce criminal and national security threats to Australia’s collective economic and societal interests through cooperative policing services.

### OUTCOME 2: ACT Policing

A safe and secure environment through policing activities on behalf of the Australian Capital Territory Government.

### OUTCOME 3: Specialist Protective Services and International Policing Partnerships

Safeguarding Australians and Australian interests through the delivery of policing services primarily focused on protective services, aviation policing and international police partnerships.

# The AFP and the trade environment

The Australian Federal Police (AFP) works closely with Australian Government partners, including the Department of Foreign Affairs and Trade (DFAT), Australian Border Force (ABF) and the Department of Defence to ensure effective implementation of Australia's export control and sanctions laws.

The AFP has a key role in gathering information about controlled items and assets relating to export control laws and sanctions. Alongside ABF, the AFP conducts criminal investigations against alleged breaches of the following:

- *Autonomous Sanctions Act 2011 (Cth)*
- *Autonomous Sanctions Regulations 2011 (Cth).*
- *Defence Trade Controls Act 2012 (Cth); and*
- *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (Cth)*

# The AFP and the trade environment

Breaching Australia's trade and sanctions laws can be a serious criminal offence.

Penalties range from substantial fines up to and including 2,500 penalty units, or if the transaction of funds is the conduct amounting to the contravention, three times the value of the transaction or up to 10 years imprisonment for individuals.

The AFP has a range of unique and powerful law enforcement tools and mechanisms to target and address individuals and entities subject to trade and sanctions law breaches.

This includes the ability to identify and freeze assets and undertake investigations and activities, in close collaboration with our domestic and international partners. This includes engagement through INTERPOL, the world's largest international police organisation, comprising 196 member countries. The AFP is Australia's representative to INTERPOL.

# The AFP and the trade environment

## Case Study

### **Operation BYAHAUT**

- Commenced as a 2016 cyber investigation into a Sydney based POI regarding a hacking incident.
- Then identified that the POI was attempting to breach Australian sanctions against the DPRK.
- The POI was trying to arrange the transfer of petroleum, iron ore, coal and other commodities.
- This also included the acquisition of the core critical components of ballistic missiles.
- Investigation revealed that the POI was in effect an “economic agent” of the DPRK Government.

# The AFP and the trade environment

## Case Study

### Operation BYAHAUT

- Investigation went to resolution during late 2017.
- POI was subsequently arrested and charged with the following:
  - 2 x Providing Services for a WMD Program, Section 11 of the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth) (Law Part Code 91754)
  - 3 x Providing a Sanctioned Service, Section 27(1) of the *Charter of the United Nations Act 1945* (Cth) and Regulation 11(2) of the *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008* (Law Part Code 88348); and

# The AFP and the trade environment

## Case Study

### Operation BYAHAUT

- 3 x Providing a Sanctioned Service, Section 16(1) of the *Autonomous Sanctions Act 2011*(Cth) and Regulation 13(1) of the *Autonomous Sanctions Regulations 2011* (Cth) (Law Part Code 91757)
- The POI was on remand for almost two years and the criminal trial commenced in the NSW Supreme Court in February 2021.
- The POI was found guilty later that month to an amended set of rolled up charges and sentenced to the following:
  - Three years and six months imprisonment.



# The AFP and the trade environment

## QUEENSLAND LINK

# China spy investigation leads to weapons trafficking charges

Nick McKenzie, Cloe Read

Australian police have disrupted an alleged plot by two Queensland-based businessmen from Russia to China, a small part of what sources have revealed is a broader investigation into a suspected Chinese Communist Party spy network with ties to a relative of Chinese President Xi Jinping.

The Australian parliament was this week roiled by disputed allegations of Chinese influence, and yesterday the Queensland Magistrate's Court heard that Chinese-born Gold Coast accountant Kim Bowei Lee, 64, and Russian-born Brisbane entrepreneur Alexander Cher, 63, had been charged with contraventions of Australia's Defence Trade Control Act.

Multiple official sources, who are not authorised to speak publicly, say the charges had spun out of a broader ASIO investigation into an alleged Chinese spy network operating in Australia. Members of that alleged network were detected as early as August 2016, when Australian officials intercepted an unusual private jet flight, organised by an Australian casino, from the Gold Coast to New Zealand.

Mr Lee was one of six passengers on the flight. Among the others were president Xi's cousin, Ming Chai, Melbourne organised crime boss Tom Zhou and another figure suspected to be linked to Chinese intelligence.

The Brisbane Magistrate's court heard yesterday that Mr Lee and Mr Cher were accused of partnering with another Chinese national and former Melbourne businessman, Brian Chen, who is now in hiding overseas and subject of an Interpol red notice.

One official source, who has been briefed by ASIO, described Mr Chen as a Chinese military intelligence operat-



Alexander Cher (above) and Kim Bowei Lee appeared in court yesterday.

ive "who travels the world as a spy". An ASIO informant claimed two years ago that Mr Chen had sought to plant an operative, Nick Zhao, a member of the Victorian Liberal Party, in a seat in Federal Parliament.

ASIO officers quizzed Mr Chen in March 2019 at Melbourne Airport but he was then allowed to leave Australia.

The charges Mr Lee and Mr Cher face are limited to accusations of the plot to illegally broker the supply of defence goods and there is no suggestion they are involved in any espionage activity or any other criminality. The charges are yet to be tested in court.

Court documents allege that between 9 January 2018 and 27 July 2018, the two men "arranged for another person to supply goods which were listed in part 1 of the Defence and Strategic Goods list from the Russian Federation to the People's Republic of China".

Mr Cher, a Russian émigré who has run a string of companies in Queensland and NSW, was charged last week by detectives and released on bail after

a short court appearance. When called for comment yesterday, he said: "I can't talk now. Call me later," before hanging up.

According to court documents, Mr Lee was released last week on bail in connection with the alleged military equipment-smuggling plot.

In a statement, the federal police confirmed that a "64-year-old Gold Coast man and a 63-year-old Brisbane man have been charged with arranging to supply [military] goods."

The AFP statement didn't name Mr Chen, but referred instead to an unnamed "59-year-old Chinese national, currently believed to be residing overseas" and who was the subject of an arrest warrant.

The *Herald* has confirmed that the case against the pair and Mr Chen grew out of a much broader probe by ASIO into Chinese intelligence operations and Chinese organised crime activities in Australia. That broader probe does not involve Mr Cher or Mr Lee.

Multiple federal and state sources with knowledge of the intelligence investigations said that by 2019, ASIO had begun mapping an overlapping and opaque network of Chinese Communist Party-linked businessmen, money launderers and intelligence operatives.

Ming Chai was of particular interest to ASIO owing to his family ties with the Chinese president and involvement with Chinese crime figures and Chinese Communist Party operatives in Melbourne.

The Australian Federal Police's initial interest in the 2016 private jet flight was linked to allegations that Tom Zhou was a major money launderer, however, subsequent ASIO investigations determined that at least two men on the flight (not Mr Chai) were linked to Chinese intelligence agencies.

# The AFP and the trade environment

## Current matters/Investigations

- The AFP currently has a range of live investigations into serious alleged trade and sanctions breaches.
- These matters are across all investigation stages including two matters before the Courts.
- The other matter before the court involves an investigation into Australian and US based company allegedly supplying “arms or related material” to a Russian arms manufacturer via a third country, contrary to s15(1) of *the Defence Trade Controls Act 2012* (Cth) during 2018.

# Questions / Thank you



**AFP**



**Australian Government**

**Defence**

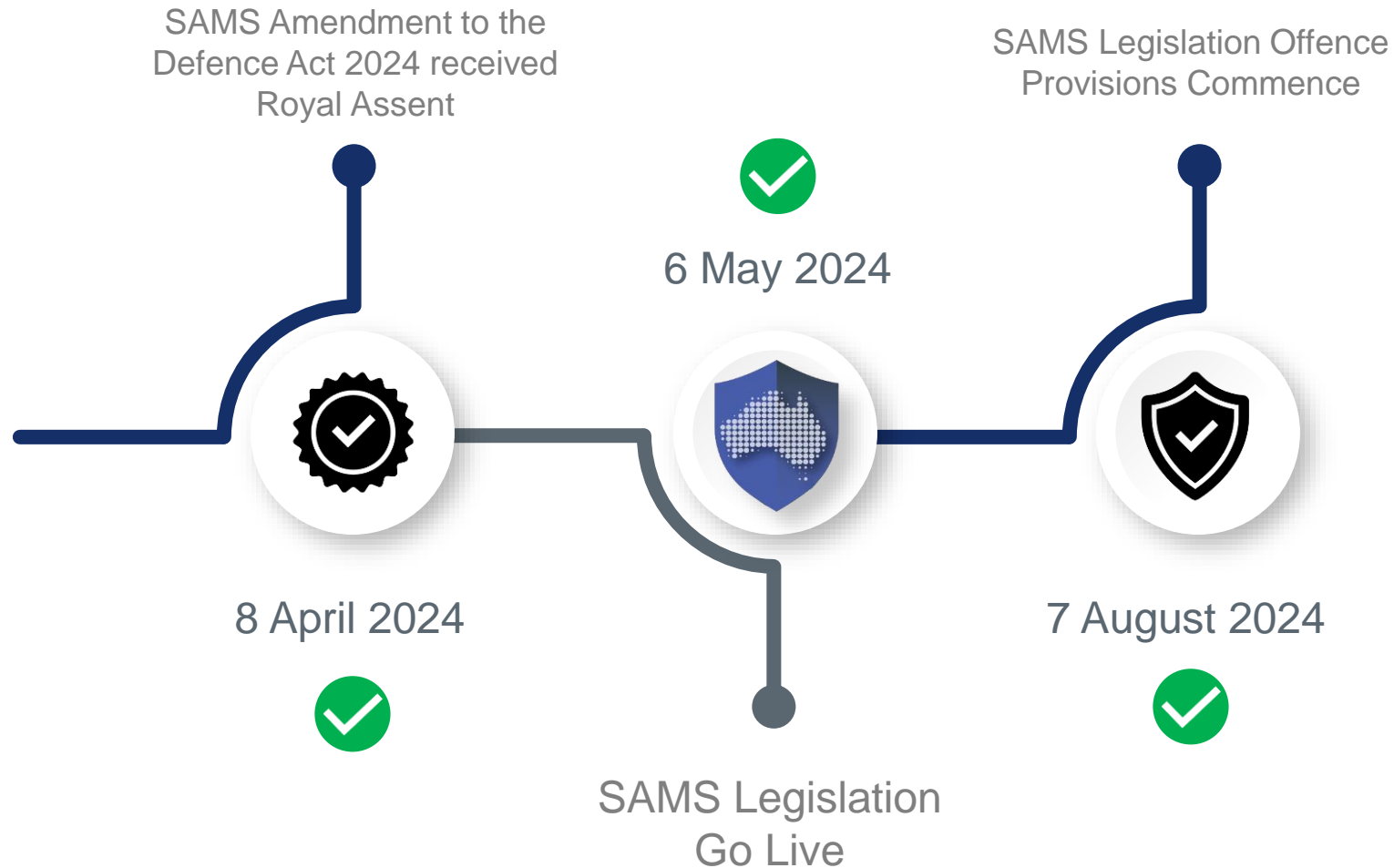


**SAMS**

**SAFEGUARDING AUSTRALIA'S MILITARY SECRETS**



# Milestones and Statistics



## Key Statistics

**+3000** FWA Requests

**+2800** FWA Requests Completed

**0** Refuse to Grant

**16 days** Median Decision Time

# 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

Former members of the Australian Defence Force, Defence and Australian Submarine Agency public servants may need to obtain authorisation if they intend to work for a foreign military, government or government entity.

## Division 2 : Work (Includes Training)

- Former Australia Defence Force (ADF) members
- Former Department of Defence Australian Public Servants (APS)
- Former Australian Submarine Agency (ASA) APS

Any Australian citizen or permanent resident 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, for a foreign military, government or government entity

## Division 3 : Training

- Australian Citizens
- Permanent Residents

# 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



# Scenario 1 - Former Defence



Australian citizen or permanent resident



Former ADF, Defence or ASA



Job family /category



In scope of Job Family time



Type of training –  
- MTTPs  
- Part 1 DSGL



Relevant foreign beneficiary/ies?



Covered by exception or legislative instrument



FWA required ?



Left in April 2022

Combat and Security -  
Artillery Gunner (ECN)  
5 years



April 2027 –  
Division 2



France, Japan,  
**Canada**



Only for Canada



Left in April 2022

Combat and Security -  
Artillery Gunner (ECN)  
5 years



April 2027 -  
Division 2



France, Japan,  
**Canada**



Commonwealth  
Agreement



Left in April 2022

Enterprise and Command  
Support - Education Officer  
1 year



April 2023



Training on Army  
procedures  
- Division 3



France, Japan,  
**Canada**



Only for Canada





# Scenario 2 – Non-Former Defence



Australian citizen or permanent resident



Former ADF, Defence or ASA



Job family /category



In scope of Job Family time



Type of training –  
- MTTPs  
- Part 1 DSGL



Relevant foreign beneficiary/ies?



Covered by exception or legislative instrument



FWA required ?



Never worked in Defence



Training on drones –  
Division 3



France, Japan,  
**Canada**



Only for Canada



Army Reserve Sercat 5



Training on drones –  
Division 3



USA



Non-relevant country



Worked in ASD from Jan 2019 to September 2023



Role is for work, not training



# SAMS – Key information



- Individual responsibility, not company
- Applies to onshore and offshore roles
- Role specific
- Can be updated after it has been granted (i.e. add new beneficiary)
- Valid for maximum of 3 years
- No cost
- Individuals can hold multiple authorisation if required



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.defence.gov.au/SAMS](http://www.defence.gov.au/SAMS)

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

[SAMS.info@defence.gov.au](mailto:SAMS.info@defence.gov.au)

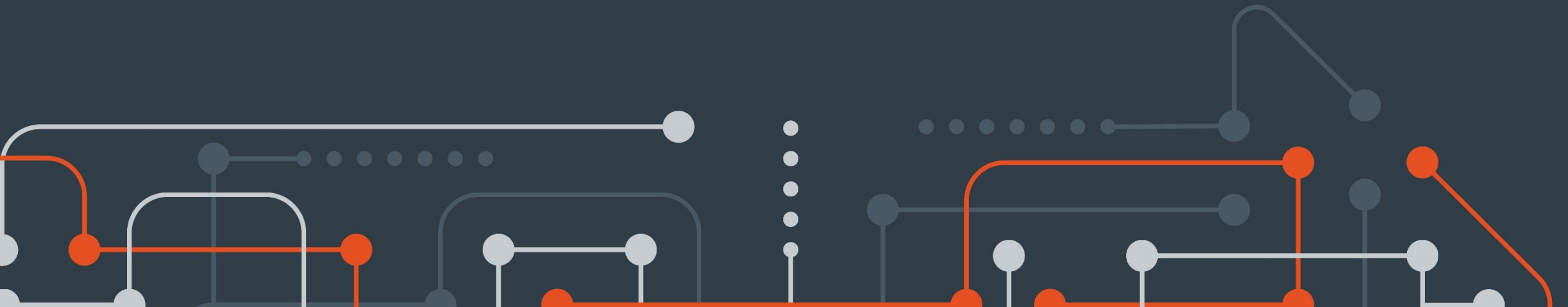


The screenshot shows the Defence website page for 'Safeguarding Australia's Military Secrets'. At the top, there is a navigation bar with 'Defence' and various menu items. The main heading is 'Safeguarding Australia's Military Secrets'. A prominent red alert box states: 'SAMS offences commence from 7 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.' Below this, there is a 'Submit a request' button labeled 'FOREIGN WORK AUTHORISATION REQUEST FORM'. A 'SAMS briefing sessions' section lists details about virtual sessions. A 'Date of commencement' section explains the legislative changes. A 'Key' section lists categories of individuals affected. On the right, a ForceNet notification from 'ForceNet Headquarters' dated 6 May 2024 is visible, with the subject 'SAFEGUARDING AUSTRALIA'S MILITARY SECRETS'. Below the notification is a blue graphic with the text: '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'.

# Questions and discussion



Thank you





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.