Draft Consolidated Defence Trade Controls Act 2012 – Parts 1, 2, 5, 6, 7 & 8 to include provisions of the exposure draft of the Defence Trade Controls Amendment Bill 2015

An Act to regulate dealings in certain goods, services and technologies, and for related purposes
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The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Defence Trade Controls Act 2012*.

2 Commencement [This section has not been consolidated as the Defence Trade Controls Amendment Bill 2015 does not amend the commencement provision of this Act]

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Commencement information</th>
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<tbody>
<tr>
<td><strong>Column 1</strong></td>
</tr>
<tr>
<td>Provision(s)</td>
</tr>
<tr>
<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
</tr>
</tbody>
</table>
### Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Sections 3 to 9</td>
<td>A single day to be fixed by Proclamation. A Proclamation must not specify a day earlier than the day the Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation done at Sydney on 5 September 2007 enters into force. However, if the provision(s) do not commence within the period of 2 years beginning on the day the Treaty enters into force, they commence on the day after the end of that period. The Minister must announce by notice in the <em>Gazette</em> the day on which the Treaty enters into force.</td>
<td></td>
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<tr>
<td>3. Section 10</td>
<td>The day after the end of the period of 2 years beginning on the day the Treaty enters into force.</td>
<td></td>
</tr>
<tr>
<td>4. Sections 11 and 12</td>
<td>A single day to be fixed by Proclamation. A Proclamation must not specify a day earlier than the day the Treaty enters into force. However, if the provision(s) do not commence within the period of 2 years beginning on the day the Treaty enters into force, they commence on the day after the end of that period.</td>
<td></td>
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<tr>
<td>5. Sections 13 to 15</td>
<td>The day after the end of the period of 2 years beginning on the day the Treaty enters into force.</td>
<td></td>
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<tr>
<td>6. Sections 16 and 17</td>
<td>At the same time as the provision(s) covered by table item 4.</td>
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## Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
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<tbody>
<tr>
<td>7. Section 18</td>
<td>The day after the end of the period of 2 years beginning on the day the Treaty enters into force.</td>
<td></td>
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<td>8. Sections 19 to 25</td>
<td>A single day to be fixed by Proclamation.</td>
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<td>A Proclamation must not specify a day earlier than the day the Treaty enters into force.</td>
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<td></td>
<td>However, if the provision(s) do not commence within the period of 2 years beginning on the day the Treaty enters into force, they commence on the day after the end of that period.</td>
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</tr>
<tr>
<td>9. Sections 26 to 57</td>
<td>A single day to be fixed by Proclamation.</td>
<td></td>
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<td></td>
<td>A Proclamation must not specify a day earlier than the day the Treaty enters into force.</td>
<td></td>
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<td>However, if the provision(s) do not commence within the period of 2 years beginning on the day the Treaty enters into force, they commence on the day after the end of that period.</td>
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<tr>
<td>10. Subsections 58(1) and (2)</td>
<td>The day after the end of the period of 2 years beginning on the day the Treaty enters into force.</td>
<td></td>
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<tr>
<td>11. Subsections 58(3) to (8) and sections 59 to 74</td>
<td>At the same time as the provision(s) covered by table item 9.</td>
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<tr>
<td>12. Sections 74A and 75</td>
<td>The day this Act receives the Royal Assent.</td>
<td>13 November 2012</td>
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**Note:** This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.
Section 2

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

The following is a simplified outline of this Act:

- This Act regulates dealings in items listed in the Defence and Strategic Goods List (the *DSGL*) and in items covered by the Defense Trade Cooperation Treaty between Australia and the United States of America.

- Part 2 creates offences for persons who:

  (a) supply DSGL technology without a permit; or

  (b) arrange for other persons to engage in dealings relating to goods listed in the DSGL, or to DSGL technology, without a permit; or

  (c) publish or otherwise disseminate DSGL technology to the public.


- Part 4 deals with monitoring compliance with Parts 3 and 6.

- Part 5 contains information-gathering powers.

- Part 6 deals with record-keeping obligations.

- Part 7 deals with review of decisions.

- Part 8 deals with various other matters (such as injunctions, forfeiture of things and delegations).
3 Simplified outline of this Act

This Act regulates dealings in items listed in Part 1 or 2 of the Defence and Strategic Goods List and in items covered by the Defense Trade Cooperation Treaty between Australia and the United States of America.

Part 1 of the Defence and Strategic Goods List covers military goods and technologies and non-military lethal goods and technologies and Part 2 of that list covers dual-use goods and technologies.

There are offences for persons who do the following not in accordance with a permit or approval:

(a) supply DSGL technology;
(b) arrange for other persons to supply goods in the Defence and Strategic Goods List or to supply DSGL technology;
(c) publish DSGL technology in Part 1 of that list.

There are provisions implementing the Defense Trade Cooperation Treaty. If a person holds an approval as a member of the Australian Community referred to in that treaty, authorised officers may monitor the person’s compliance with this Act.

The Secretary can obtain from a person information or a document that is relevant to the operation of this Act.

There are record-keeping obligations for persons who hold permits under this Act or who hold approvals as members of the Australian Community referred to in the Defense Trade Cooperation Treaty.

Various decisions under this Act are subject to internal review by the Minister or review by the Administrative Appeals Tribunal.

This Act also deals with miscellaneous matters, such as injunctions, forfeiture, delegations and regulations.
4 Definitions

(1) In this Act:

arranges: see section 5A.

arranges has a meaning affected by section 5A.

Article 3(1) US Defence Article has the meaning given by section 5.
Note: See also section 35 (about transition to the Defense Trade Cooperation Treaty).

Article 3(3) US Defence Article has the meaning given by section 5.
Note: See also section 35 (about transition to the Defense Trade Cooperation Treaty).

ASIO means the Australian Security Intelligence Organisation.

ASIS means the Australian Secret Intelligence Service.

Australia, when used in a geographical sense, includes the external Territories.


Australian Community member means:
(a) a body corporate that holds an approval under section 27; or
(b) a person covered by Article 4(1)(b) of the Defense Trade Cooperation Treaty; or
(c) a person:
   (i) who is employed, or is engaged under a contract for services, by a body corporate that holds an approval under section 27; and
   (ii) who satisfies the requirements prescribed by the regulations for the purposes of this subparagraph.

Australian person means:
(a) the Commonwealth, a State or a Territory or an authority of the Commonwealth, a State or a Territory; or

(b) an individual who is an Australian citizen; or
(c) an individual who is, within the meaning of the Migration Act 1958, the holder of a permanent visa; or
(d) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

*authorised officer* means a person appointed as an authorised officer under section 39.

**Defence and Strategic Goods List** means the document:
(a) formulated by the Minister, and published, as mentioned in paragraph 112(2A)(aa) of the Customs Act 1901; and
(b) known as the Defence and Strategic Goods List; as amended by the Minister and in force from time to time.

*defence services*, in relation to goods or in relation to technology relating to goods, means the giving of assistance (including training) in relation to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing or use of the goods or technology.

**Defense Trade Cooperation Munitions List** means the document made under section 36, as amended by the Minister and in force from time to time.


Note: In 2012, the text of the Treaty was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

**DSGL technology** means a thing that is:
(a) technology, or software, as defined in the Defence and Strategic Goods List; and
(b) within the scope of that list.

Note: For paragraph (b), the Defence and Strategic Goods List contains exemptions relating to technology or software in the public domain and to basic scientific research.
Section 4

**foreign person** means a person who is not an Australian person.

**goods** has the same meaning as in the *Customs Act 1901*.

**Implementing Arrangements** means the Implementing Arrangements (having effect from time to time) referred to in Article 14 of the Defense Trade Cooperation Treaty.

Note: In 2012, the text of the Implementing Arrangements was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

**incorporated goods** has the meaning given by section 5.

**manager** of a body corporate means an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the body’s affairs.

**member of the United States Community** means a person or body covered by Article 5(1) or (2) of the Defense Trade Cooperation Treaty.

**military end-use:** goods or DSGL technology is or may be for a military end-use if the goods or DSGL technology is or may be for use in relation to operations, exercises or other activities conducted by an armed force or an armed group, whether or not the armed force or armed group forms part of the armed forces of the government of a foreign country.

**monitoring powers** has the meaning given by section 42.

**non-cash benefit** means property or services in any form other than money.

**offence against this Act** includes the following:

(a) an offence against section 6 of the *Crimes Act 1914* that relates to this Act;

(b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to this Act;

(c) an offence that is taken to have been committed because of section 11.2, 11.2A or 11.3 of the *Criminal Code* and that relates to this Act.
original goods has the meaning given by section 5.

person assisting an authorised officer has the meaning given by section 50.

premises includes the following:
   (a) a structure, building, caravan, vehicle, vessel or aircraft;
   (b) a place (whether or not enclosed or built on);
   (c) a part of a thing referred to in paragraph (a) or (b).

publish means publish on the internet or otherwise.

registered broker means a person in respect of whom a registration is in force under Division 3 of Part 2.

Secretary means the Secretary of the Department.

supply:
   (a) includes supply by way of sale, exchange, gift, lease, hire or hire-purchase; and
   (b) in relation to DSGL technology—includes provide access to DSGL technology.

technology relating to goods means:
   (a) information relating to the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of the goods (including information in the form of blueprints, drawings, photographs, plans, instructions, specifications, algorithms or documentation); or
   (b) software relating to the goods; other than information specified in an instrument under subsection (2).

Weapons of Mass Destruction program means a plan or program for the development, production, acquisition or stockpiling of nuclear, biological or chemical weapons or missiles capable of delivering such weapons.
Section 5

(2) The Minister may, by legislative instrument, specify information for the purposes of the definition of *technology* in subsection (1).

5 US Defence Articles

*Article 3(1) US Defence Article*

(1) *Article 3(1) US Defence Article* means goods:

(a) the initial movement of which is from a member of the United States Community to an Australian Community member, or to an Australian Community facility, for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and

(b) that are listed in Part 1 of the Defense Trade Cooperation Munitions List immediately before the start of that movement; and

(c) that are not listed in Part 2 of the Defense Trade Cooperation Munitions List immediately before the start of that movement.

(2) Goods incorporating an Article 3(1) US Defence Article within the meaning of subsection (1) are also an *Article 3(1) US Defence Article*.

(3) The modification of an Article 3(1) US Defence Article in any way does not affect the status of the goods concerned as an Article 3(1) US Defence Article.

*Article 3(3) US Defence Article*

(4) *Article 3(3) US Defence Article* means goods:

(a) acquired by, and delivered to, the Government of Australia as mentioned in Article 3(3) of the Defense Trade Cooperation Treaty; and

(b) that are listed in Part 1 of the Defense Trade Cooperation Munitions List at the time of that delivery; and

(c) that are not listed in Part 2 of the Defense Trade Cooperation Munitions List at the time of that delivery.
Section 5A

(5) Goods incorporating an Article 3(3) US Defence Article within the meaning of subsection (4) are also an Article 3(3) US Defence Article.

(6) The modification of an Article 3(3) US Defence Article in any way does not affect the status of the goods concerned as an Article 3(3) US Defence Article.

Original goods

(7) Original goods means goods that are:
   (a) an Article 3(1) US Defence Article within the meaning of subsection (1); or
   (b) an Article 3(3) US Defence Article within the meaning of subsection (4).

Incorporated goods

(8) Incorporated goods means goods that are:
   (a) an Article 3(1) US Defence Article within the meaning of subsection (2); or
   (b) an Article 3(3) US Defence Article within the meaning of subsection (5).

Note: See also section 35 (about transition to the Defense Trade Cooperation Treaty).

5A Arranging for persons to supply goods or DSGL technology

(1) For the purposes of this Act, a person (the broker) arranges for another person to supply goods or DSGL technology if and only if:
   (a) the broker acts as an agent of a person, or acts as an intermediary between 2 or more persons, in relation to the supply; and
   (b) either:
      (i) the broker receives, or is to receive, any money or non-cash benefit for so acting; or
      (ii) the broker so acts for the purpose of advancing a political, religious or ideological cause.
Part 1 Preliminary

Section 6

(2) Subsection (1) does not limit the meaning of "arranges" for the purposes of this Act.

6 Crown to be bound

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

7 Extension to external Territories

This Act extends to every external Territory.

8 Extension to things outside Australia

Except so far as the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

9 Severability—additional effect of Act

(1) Without limiting its effect apart from this section, this Act also has the effect it would have if its application were limited to:

(a) giving effect to:
   (i) the Defense Trade Cooperation Treaty; or
   (ii) any international obligation of Australia arising otherwise than under the Defense Trade Cooperation Treaty; or

(b) matters external to Australia; or

(c) matters of international concern; or

(d) the defence of Australia; or

(e) things done, or omitted to be done, by constitutional corporations; or

(f) things done, or omitted to be done, in the course of constitutional trade or commerce; or

(g) things done using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(h) things done by, or in relation to, aliens (within the meaning of paragraph 51(xix) of the Constitution).

(2) In this section:

constititutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constititutional trade or commerce means trade or commerce:

(a) between Australia and places outside Australia; or

(b) among the States; or

(c) within a Territory, between a State and a Territory or between 2 Territories.
Part 2—Dealings in items in the Defence and Strategic Goods List

Division 1A—Simplified outline of this Part

9A Simplified outline of this Part

There are offences for persons who do the following not in accordance with a permit or approval:

(a) supply DSGL technology;
(b) arrange for other persons to supply goods in the Defence and Strategic Goods List or to supply DSGL technology;
(c) publish DSGL technology in Part 1 of that list.

The Minister may issue notices prohibiting persons from doing the following on grounds relating to the security, defence or international relations of Australia:

(a) supplying DSGL technology;
(b) publishing DSGL technology;
(c) arranging for other persons to supply goods in the Defence and Strategic Goods List or to supply DSGL technology.

The Secretary may issue interim prohibition notices for publishing DSGL technology.

There are offences for contravening a notice issued by the Minister or Secretary.

Chapter 2 of the Criminal Code applies to all offences against this Act.

Registered brokers are able to obtain permits to arrange for other persons to supply goods in the Defence and Strategic Goods List or...
Division 1—Primary offences

10 Offence—supply of DSGL technology

(1) A person (the supplier) commits an offence if:
   (a) the supplier supplies DSGL technology to another person; and
   (b) either:
      (i) the supply is from a place in Australia to a place outside Australia; or
      (ii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the supplier is in Australia and the other person is outside Australia; and
   (c) either:
      (i) the supplier does not hold a permit under section 11 authorising the supply of the DSGL technology; or
      (ii) the supply of the DSGL technology contravenes a condition of a permit that the supplier holds under section 11; and
   (d) there is no notice in force under subsection 14(1) in relation to the supplier and the supply.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

Exceptions

(1A) Subsection (1) does not apply if:
   (a) the supply is not the provision of access to DSGL technology; and
   (b) the supply is made orally; and
Part 2  Dealings in items in the Defence and Strategic Goods List  
Division 1  Primary offences

Section 10

(c) the supply is neither for a military end-use nor for use in a Weapons of Mass Destruction program.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A): see subsection 13.3(3) of the Criminal Code.

(2) Subsection (1) does not apply if:
(a) the supply is of DSGL technology in relation to original goods; and
(b) the supply is by an Australian Community member or by a member of the United States Community; and
(c) the supply is to an Australian Community member or a member of the United States Community; and
(d) the supply is for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
(e) at the time of the supply, the original goods are listed in Part 1 of the Defense Trade Cooperation Munitions List; and
(f) at the time of the supply, the original goods are not listed in Part 2 of the Defense Trade Cooperation Munitions List.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.

(3) Subsection (1) does not apply if:
(a) the DSGL technology is supplied by or to a person who is a member of the Australian Defence Force, an APS employee, an employee of ASIO, an employee of ASIS, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
(b) the supply occurs he or she supplies the DSGL technology in the course of his or her duties as such a person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.

(3A) Subsection (1) does not apply if:
(a) the supply is of DSGL technology within the scope of Part 2 of the Defence and Strategic Goods List; and
(b) the supply is preparatory to the publication of the DSGL technology to the public or to a section of the public; and
Dealings in items in the Defence and Strategic Goods List

Primary offences

Division 1

Section 11

(c) there is neither a notice in force under subsection 14B(1), nor a notice in force under subsection 14C(1), in relation to the supplier and the DSGL technology.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A): see subsection 13.3(3) of the Criminal Code.

(4) Subsection (1) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the Criminal Code.

Geographical jurisdiction

(5) Section 15.2 of the Criminal Code (extended geographical jurisdiction — category B) applies to an offence against subsection (1).

Definition

(6) In this section:

place includes:
(a) a vehicle, vessel or aircraft; and
(b) an area of water; and
(c) a fixed or floating structure or installation of any kind.

11 Permits for purposes of section 10

(1) A person may apply to the Minister for a permit under this section to supply DSGL technology to another person.

Note: Section 66 sets out application requirements.

(2) Without limiting subsection (1), an application by a person under that subsection may do one or more of the following:
(a) cover 2 or more supplies by the person;
(b) cover one or more supplies by the person for a period described in the application;
(c) cover one or more supplies by the person for a project described in the application.
Part 2  Dealings in items in the Defence and Strategic Goods List
Division 1  Primary offences

Section 11

Example 1: For paragraph (a)—an individual or a company applies for a permit to supply particular DSGL technology to various companies or to supply various DSGL technologies to one company.

Example 2: For paragraph (b)—an individual or a company applies for a permit to supply particular DSGL technology to one company for a 5-year period.

Example 3: For paragraph (c)—an individual or a company applies for a permit to supply particular DSGL technology to various companies for a particular project.

(2A) An application by a person under subsection (1), that covers one or more supplies by the person for a project described in the application, may also cover one or more supplies by one or more other persons (each of whom is a project participant) for that project.

Minister’s decision

(3) If a person makes an application under subsection (1) in accordance with section 66:

(a) the Minister must decide whether or not to give the person a permit for each supply, by the person, covered by the application; and

(b) if subsection (2A) applies—the Minister must decide whether or not to give each project participant a permit for each supply, by the participant, covered by the application.

(2) An application under subsection (1) may:

(a) cover more than one supply; and

(b) cover a particular supply for a period described in the application.

Example 1: For paragraph (a)—an individual or a company applies for a permit to supply particular DSGL technology to various companies or to supply various DSGL technologies to one company.

Example 2: For paragraph (b)—an individual or a company applies for a permit to supply particular DSGL technology to one company for a 3-year period.

Minister’s decision
Primary offences Division 1

Section 11

(3) If a person makes an application under subsection (1) in accordance with section 66, the Minister must decide whether or not to give the person a permit for each supply covered by the application.

(4) The Minister may give a person a permit for a specified supply if, having regard to the criteria prescribed by the regulations for the purposes of this subsection and to any other matters that the Minister considers appropriate, the Minister is satisfied that the supply would not prejudice the security, defence or international relations of Australia.

Note: Section 67 deals with giving permits under this Act.

(5) Without limiting subsection (4), a permit given by the Minister may do one or more of the following:
   (a) cover 2 or more supplies;
   (b) cover one or more specified supplies for a period specified in, or worked out in accordance with, the permit;
   (c) cover one or more specified supplies for a specified project.

(5) A permit given by the Minister may:
   (a) cover more than one supply; and
   (b) cover a specified supply for a period specified in, or worked out in accordance with, the permit.

(6) If the Minister refuses to give a person a permit for a supply covered by the application, the Minister must give the person notice of the refusal and the reasons for the refusal.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

Permit conditions

(7) A permit given to a person is subject to any conditions specified in the permit.

Note: Section 12 deals with changing permit conditions.
Part 2 Dealings in items in the Defence and Strategic Goods List
Division 1 Primary offences

Section 12

Revoking a permit

(8) The Minister may, by writing, revoke a permit given to a person under this section.

(9) However, the Minister may revoke the permit only if the Minister is satisfied that any supply covered by the permit would prejudice the security, defence or international relations of Australia.

(10) The Minister must give the person notice of the revocation and the reasons for the revocation. The revocation takes effect at the time the person receives the notice.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

12 Changing permit conditions

Imposing new conditions

(1) After giving a person a permit under section 11, the Minister may impose a new permit condition by giving the person notice of the condition. The notice must include the reasons for imposing the new condition.

Removing or varying conditions

(2) The Minister may remove or vary a condition of the permit by giving the person notice of the removal or variation. For a variation of a condition, the notice must include the reasons for the variation.

When new conditions or variations take effect

(3) The imposition of a new permit condition under subsection (1), or the variation of a permit condition under subsection (2), takes effect at the time specified in the notice, which must be at least 14 days after the day on which the notice is given.

(4) However, the notice may specify that the new permit condition or the variation takes effect at the time the person receives the notice if the Minister is satisfied that the new permit condition or variation needs to take effect then for reasons of urgency.
Section 13

13 Breaching permit conditions

(1) A person commits an offence if:
   (a) the person is the holder of a permit under section 11; and
   (b) the person does an act or omits to do an act; and
   (c) the act or omission breaches a condition of the permit.

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(3) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

14 Minister’s notice prohibiting supply of DSGL technology

14 Notice prohibiting activities

(1) If the Minister reasonably believes, believes or suspects that, if a person were to supply to another person particular DSGL technology in any circumstances or in particular circumstances, the supply would prejudice the security, defence or international relations of Australia, the Minister may give the person a notice:
   (a) prohibiting the person from supplying that DSGL technology; or
   (b) prohibiting the person from supplying that DSGL technology unless conditions specified in the notice are complied with.

Note: Section 67 deals with giving notices under this Act.

(2) A notice given to a person under subsection (1) must set out the Minister’s reasons for giving the notice.

Note: Section 68 deals with disclosing reasons for decisions.
**Part 2**  Dealings in items in the Defence and Strategic Goods List  
**Division 1**  Primary offences  

**Section 14**  

*Period notice in force*

(3) A notice given to a person under subsection (1) comes into force at the time the person receives the notice. This subsection is subject to subsection (5).

(4) A notice given to a person under subsection (1) remains in force for the period specified in, or worked out in accordance with, the notice (which must not be more than 12 months), unless revoked earlier.

*Later notices*

(5) A notice may be given to a person under subsection (1) while an earlier notice given to the person under subsection (1) is in force. The later notice may be expressed to come into force at the time the earlier notice ceases to be in force.

(6) Subsection (5) does not prevent a notice being given to a person under subsection (1) after an earlier notice given to the person under subsection (1) ceases to be in force.

*Notice not a legislative instrument*

(7) A notice under subsection (1) is not a legislative instrument.

*Revoking a notice*

(8) The Minister may, by writing, revoke a notice given to a person under subsection (1).

(9) The Minister must give the person notice of the revocation. The revocation takes effect at the time the person receives the notice.  

Note: Section 67 deals with giving notices under this Act.

*Offence*

(10) A person commits an offence if:  

(a) the person supplies DSGL technology; and  

(b) the supply contravenes a notice, or a condition specified in a notice, that is in force under subsection (1); and  

(c) the person knows of the contravention.
Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(11) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (10).

14A Offence—publishing DSGL technology in Part 1 of the DSGL

(1) A person commits an offence if:
   (a) the person publishes DSGL technology to the public or to a section of the public; and
   (b) the DSGL technology is within the scope of Part 1 of the Defence and Strategic Goods List; and
   (c) either:
      (i) the person does not hold an approval under this section authorising the publication; or
      (ii) the publication contravenes a condition of an approval that the person holds under this section; and
   (d) there is neither a notice in force under subsection 14B(1), nor a notice in force under subsection 14C(1), in relation to the person and the DSGL technology.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

Exception

(2) Subsection (1) does not apply if the DSGL technology has already been lawfully made available to the public or to the section of the public.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Approvals

(3) A person may apply to the Minister for an approval under this section to publish DSGL technology to the public or a section of the public.

Note: Section 66 sets out application requirements.
Part 2 Dealings in items in the Defence and Strategic Goods List
Division 1 Primary offences

Section 14A

(4) If a person makes an application under subsection (3) in accordance with section 66, the Minister must decide whether or not to give the person an approval.

(5) The Minister may give the person the approval sought if the Minister is satisfied that the publication of the DSGL technology covered by the application would not prejudice the security, defence or international relations of Australia.

Note: Section 67 deals with giving approvals under this Act.

(6) If the Minister refuses to give the person the approval sought, the Minister must give the person notice of the refusal and the reasons for the refusal.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

Approval conditions

(7) An approval given to a person is subject to any conditions specified in the approval.

Revoking an approval

(8) The Minister may, by writing, revoke an approval given to a person under this section.

(9) However, the Minister may revoke the approval only if the Minister is satisfied that any publication of the DSGL technology covered by the approval would prejudice the security, defence or international relations of Australia.

(10) The Minister must give the person notice of the revocation and the reasons for the revocation. The revocation takes effect at the time the person receives the notice.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.
Section 14B

**Geographical jurisdiction**

(11) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

**Approval not a legislative instrument**

(12) An approval under this section is not a legislative instrument.

### 14B Minister’s notice prohibiting publication of DSGL technology

(1) If the Minister reasonably believes that, if a person were to publish particular DSGL technology to the public or a section of the public, the publication would prejudice the security, defence or international relations of Australia, the Minister may give the person a notice:

(a) prohibiting the person from publishing that DSGL technology to the public or to a specified section of the public; or

(b) prohibiting the person from publishing that DSGL technology to the public, or to a specified section of the public, unless specified conditions are complied with.

Note: Section 67 deals with giving notices under this Act.

(2) A notice given to a person under subsection (1) must set out the Minister’s reasons for giving the notice.

Note: Section 68 deals with disclosing reasons for decisions.

**Period notice in force**

(3) A notice given to a person under subsection (1) comes into force at the time the person receives the notice. This subsection is subject to subsection (5).

(4) A notice given to a person under subsection (1) remains in force for the period specified in, or worked out in accordance with, the notice (which must not be more than 12 months), unless revoked earlier.
Part 2  Dealings in items in the Defence and Strategic Goods List
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Section 14B

Later notices

(5) A notice may be given to a person under subsection (1) while an earlier notice given to the person under subsection (1) is in force. The later notice may be expressed to come into force at the time the earlier notice ceases to be in force.

(6) Subsection (5) does not prevent a notice being given to a person under subsection (1) after an earlier notice given to the person under subsection (1) ceases to be in force.

Notice not a legislative instrument

(7) A notice under subsection (1) is not a legislative instrument.

Revoking a notice

(8) The Minister may, by writing, revoke a notice given to a person under subsection (1).

(9) The Minister must give the person notice of the revocation. The revocation takes effect at the time the person receives the notice.

Note: Section 67 deals with giving notices under this Act.

Offence

(10) A person commits an offence if:

(a) the person publishes DSGL technology to the public or to a section of the public; and

(b) the publication contravenes a notice, or a condition specified in a notice, that is in force under subsection (1); and

(c) the person knows of the contravention.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(11) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (10).
14C Secretary’s notice prohibiting publication of DSGL technology

(1) If, on the basis of information that the Secretary is aware of, the Secretary considers that there may be grounds for the Minister to give a person a notice under subsection 14B(1), the Secretary may give the person a notice (the *interim notice*) directing the person not to publish specified DSGL technology to the public or to a specified section of the public.

Note: Section 67 deals with giving notices under this Act.

(2) The interim notice must set out the Secretary’s reasons for giving the notice.

Note: Section 68 deals with disclosing reasons for decisions.

(3) The interim notice comes into force at the time the person receives the notice.

(4) The interim notice ceases to be in force at whichever of the following times happens first:
   
   (a) the time a notice under subsection 14B(1) comes into force in relation to the person and the DSGL technology that is the subject of the interim notice;
   
   (b) the end of the period of 90 days beginning on the day that the interim notice comes into force;
   
   (c) the time the person receives notice under subsection (7) of this section that the interim notice is revoked.

*Interim notice not a legislative instrument*

(5) The interim notice is not a legislative instrument.

*Revoking the interim notice*

(6) The Secretary may, by writing, revoke the interim notice.

(7) The Secretary must give the person notice of the revocation. The revocation takes effect at the time the person receives the notice.

Note: Section 67 deals with giving notices under this Act.
Part 2  Dealings in items in the Defence and Strategic Goods List
Division 1  Primary offences

Section 14A

Offence

(8) A person commits an offence if:
   (a) the person publishes DSGL technology to the public or to a section of the public; and
   (b) the publication contravenes a notice that is in force under subsection (1); and
   (c) the person knows of the contravention.

Penalty:  Imprisonment for 10 years or 2,500 penalty units, or both.

(9) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (8).

14A—Publishing etc. DSGL technology

(1) A person commits an offence if:
   (a) either:
       (i) the person publishes DSGL technology to the public, or to a section of the public, by electronic or other means; or
       (ii) the person otherwise disseminates DSGL technology to the public, or to a section of the public, by electronic or other means; and
   (b) the person does not hold an approval under this section authorising the publication or dissemination of the DSGL technology.

Penalty:  Imprisonment for 10 years or 2,500 penalty units, or both.

Exception

(2) Subsection (1) does not apply if the DSGL technology has already been lawfully made available to the public or to the section of the public.

Note:  A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.
Approvals

(3) The Minister may, in writing, approve a person publishing or otherwise disseminating specified DSGL technology to the public or to a specified section of the public. The Minister may give an approval only if the Minister is satisfied that it is in the public interest to do so.

(4) If the Minister gives an approval under subsection (3), the Minister must give the person the approval.

Note: Section 67 deals with giving approvals under this Act.

Geographical jurisdiction

(5) Section 15.2 of the Criminal Code (extended geographical jurisdiction — category B) applies to an offence against subsection (1).

Approval not a legislative instrument

(6) An approval under this section is not a legislative instrument.
Part 2  Dealings in items in the Defence and Strategic Goods List
Division 2  Brokering offences

Section 15

Division 2—Brokering offences

15 Offence—arranging supplies in relation to the DSGL

15 Offence—arranging supplies in relation to the Defence and Strategic Goods List

(1) A person (the \textit{first person}) commits an offence if:

(a) either:

(i) the first person arranges for another person to supply goods, where the goods are listed in Part 1 of the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; or

(ii) the first person arranges for another person to supply DSGL technology, where the DSGL technology is within the scope of Part 1 of the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; and

(b) either:

(i) the first person does not hold a permit under section 16 authorising the arrangement; or

(ii) the arrangement contravenes a condition of a permit that the first person holds under section 16; and

(c) there is no notice in force under subsection 15A(1) in relation to the first person and the arrangement.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(1A) A person (the \textit{first person}) commits an offence if:

(a) either:

(i) the first person arranges for another person to supply goods, where the goods are listed in Part 2 of the Defence and Strategic Goods List and the supply is, or
is to be, from a place outside Australia to another place outside Australia; or
(ii) the first person arranges for another person to supply DSGL technology, where the DSGL technology is within the scope of Part 2 of the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; and
(b) the first person knows that, or is reckless or negligent as to whether, the goods or DSGL technology will or may be for a military end-use; and
(c) either:
    (i) the first person does not hold a permit under section 16 authorising the arrangement; or
    (ii) the arrangement contravenes a condition of a permit that the first person holds under section 16.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

Exceptions

(2) Subsection (1) or (1A) does not apply if:
(a) the first person is a member of the Australian Defence Force, an APS employee, an employee of ASIO, an employee of ASIS, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
(b) he or she does the arranging in the course of his or her duties as such a person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.

(3) Subsection (1) or (1A) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the Criminal Code.

(4) Subsection (1) or (1A) does not apply if:
Part 2  Dealings in items in the Defence and Strategic Goods List
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(a) either:
   (i) the first person arranges for the other person to supply the goods, or to supply the DSGL technology, where the supply is, or is to be, from a place in a foreign country; or
   (ii) the first person does all of the arranging while the first person is in any foreign country; and
(b) that foreign country is:
   (i) a Participating State for the purposes of the Wassenaar Arrangement; and
   (ii) a participant in the Australia Group; and
   (iii) a partner in the Missile Technology Control Regime; and
   (iv) a participant in the Nuclear Suppliers Group; and
(c) that foreign country is specified in an instrument under subsection (4A).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the Criminal Code.

(4A) The Minister may, by legislative instrument, specify foreign countries for the purposes of paragraph (4)(c).

(4B) Subsection (1) or (1A) does not apply if the first person arranges for the other person to supply the goods, or to supply the DSGL technology, where the supply is, or is to be, under or in connection with a contract specified in an instrument under subsection (4C).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4B): see subsection 13.3(3) of the Criminal Code.

(4C) The Minister may, by legislative instrument, specify contracts for the purposes of subsection (4B).

Offence—brokering involving Weapons of Mass Destruction program

(4D) A person (the first person) commits an offence if:
   (a) either:
      (i) the first person arranges for another person to supply goods, where the goods are listed in Part 2 of the
Dealings in items in the Defence and Strategic Goods List  Part 2  
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Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; or  
(ii) the first person arranges for another person to supply DSGL technology, where the DSGL technology is within the scope of Part 2 of the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; and  
(b) the first person knows that, or is reckless or negligent as to whether, the goods or DSGL technology will or may be used in a Weapons of Mass Destruction program; and  
(c) either:  
(i) the first person does not hold a permit under section 16 authorising the arrangement; or  
(ii) the arrangement contravenes a condition of a permit that the first person holds under section 16.  

Penalty:  Imprisonment for 10 years or 2,500 penalty units, or both.  

(4) Subsection (1) does not apply if:  
(a) the first person arranges for another person to supply goods, or to supply DSGL technology, where the supply is, or is to be, from a place in a foreign country to another place in that country; and  
(b) that country is a Participating State for the purposes of the Wassenaar Arrangement.  

Note:  A defendant bears an evidential burden in relation to the matter in subsection (4); see subsection 13.3(3) of the Criminal Code.  

Geographical jurisdiction  

(5) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (1), (1A) or (4D).  

Definitions  

(6) In this section:
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Section 15A

_Australia Group_ means the group of countries that form the Australia Group, whose first meeting occurred in Brussels in June 1985.

_Missile Technology Control Regime_ means the group of countries that form the Missile Technology Control Regime, whose first meeting occurred in Rome in September 1988.

_Nuclear Suppliers Group_ means the group of countries that form the Nuclear Suppliers Group, whose first meeting occurred in London in November 1975.

_place_ includes:
(a) a vehicle, vessel or aircraft; and
(b) an area of water; and
(c) a fixed or floating structure or installation of any kind.

_Wassenaar Arrangement_ means the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, adopted in Vienna, Austria, on 11 and 12 July 1996, as amended from time to time.

15A  Minister’s notice prohibiting arranging of supplies in relation to the DSGL

(1) If the Minister reasonably believes that, if:
(a) a person (the _first person_) were to arrange for another person to supply particular goods listed in the Defence and Strategic Goods List from a place outside Australia to another place outside Australia; or
(b) a person (the _first person_) were to arrange for another person to supply particular DSGL technology from a place outside Australia to another place outside Australia;
the supply would prejudice the security, defence or international relations of Australia, the Minister may give the first person a notice:
(c) prohibiting the first person from making that arrangement; or
(d) prohibiting the first person from making that arrangement unless conditions specified in the notice are complied with.
Section 15A

Note: Section 67 deals with giving notices under this Act.

(2) A notice given to the first person under subsection (1) must set out the Minister’s reasons for giving the notice.

Note: Section 68 deals with disclosing reasons for decisions.

Period notice in force

(3) A notice given to the first person under subsection (1) comes into force at the time the first person receives the notice. This subsection is subject to subsection (5).

(4) A notice given to the first person under subsection (1) remains in force for the period specified in, or worked out in accordance with, the notice (which must not be more than 12 months), unless revoked earlier.

Later notices

(5) A notice may be given to the first person under subsection (1) while an earlier notice given to the first person under subsection (1) is in force. The later notice may be expressed to come into force at the time the earlier notice ceases to be in force.

(6) Subsection (5) does not prevent a notice being given to the first person under subsection (1) after an earlier notice given to the first person under subsection (1) ceases to be in force.

Notice not a legislative instrument

(7) A notice under subsection (1) is not a legislative instrument.

Revoking a notice

(8) The Minister may, by writing, revoke a notice given to the first person under subsection (1).

(9) The Minister must give the first person notice of the revocation. The revocation takes effect at the time the first person receives the notice.

Note: Section 67 deals with giving notices under this Act.
Dealings in items in the Defence and Strategic Goods List

Brokering offences

Section 15B

**Offence**

(10) The first person commits an offence if:

(a) either:

(i) the first person arranges for another person to supply goods, where the goods are listed in the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; or

(ii) the first person arranges for another person to supply DSGL technology, where the supply is, or is to be, from a place outside Australia to another place outside Australia; and

(b) the making of that arrangement contravenes a notice, or a condition specified in a notice, that is in force under subsection (1); and

(c) the first person knows of the contravention.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

(11) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (10).

15B Minister’s notice requiring a permit for arranging of supplies in relation to Part 2 of the DSGL

(1) The Minister may give a person a notice directing the person not to do either or both of the following without a permit under section 16:

(a) arrange for another person to supply specified goods listed in Part 2 of the Defence and Strategic Goods List from a place outside Australia to another place outside Australia;

(b) arrange for another person to supply specified DSGL technology within the scope of Part 2 of the Defence and Strategic Goods List from a place outside Australia to another place outside Australia.

Note: Section 67 deals with giving notices under this Act.
(2) A notice given to a person under subsection (1) must set out the Minister’s reasons for giving the notice.

Note: Section 68 deals with disclosing reasons for decisions.

*When notice comes into force*

(3) A notice given to a person under subsection (1) comes into force at the time the person receives the notice.

*Notice not a legislative instrument*

(4) A notice under subsection (1) is not a legislative instrument.

*Revoking a notice*

(5) The Minister may, by writing, revoke a notice given to a person under subsection (1).

(6) The Minister must give the person notice of the revocation. The revocation takes effect at the time the person receives the notice.

Note: Section 67 deals with giving notices under this Act.

*Offence*

(7) A person (the **first person**) commits an offence if:

(a) either:

(i) the first person arranges for another person to supply goods, where the goods are listed in Part 2 of the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; or

(ii) the first person arranges for another person to supply DSGL technology, where the DSGL technology is within the scope of Part 2 of the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia; and

(b) the making of that arrangement contravenes a notice that is in force under subsection (1); and

(c) the first person knows of the contravention.
Part 2  Dealings in items in the Defence and Strategic Goods List
Division 2  Brokering offences

Section 16

Penalty:  Imprisonment for 10 years or 2,500 penalty units, or both.

Geographical jurisdiction

(8) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (7).

16  Permits for purposes of section 15 or 15B

16  Permits for purposes of section 15

(1) A registered broker may apply to the Minister for a permit under this section to:

(a) arrange for another person to supply goods, where the goods are listed in the Defence and Strategic Goods List; or

(b) arrange for another person to supply DSGL technology.

Note:  Section 66 sets out application requirements.

(2) Without limiting subsection (1), an application under that subsection may do one or more of the following:

(a) cover 2 or more arrangements;

(b) cover one or more arrangements, where the activity covered by each arrangement is for a period described in the application;

(c) cover one or more arrangements, where the activity covered by each arrangement is for a project described in the application.

Example 1:  For paragraph (a)—a registered broker applies for a permit to arrange for company A to supply goods and to arrange for company B to supply DSGL technology.

Example 2:  For paragraph (b)—a registered broker applies for a permit to arrange for company A to supply goods for a 3-year period.

Example 3:  For paragraph (c)—a registered broker applies for a permit to arrange for company A to supply goods for a particular project.

(2)  An application under subsection (1) may:

(a) be for more than one arrangement; and
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(b) be for a particular arrangement, where the activity covered by the arrangement is for a period described in the application.

Example 1: For paragraph (a)—a registered broker applies for a permit to arrange for company A to supply goods and to arrange for company B to supply DSGL technology.

Example 2: For paragraph (b)—a registered broker applies for a permit to arrange for company A to supply goods for a 3-year period.

Minister’s decision

(3) If a registered broker makes an application under subsection (1) in accordance with section 66, the Minister must decide whether or not to give the broker a permit for each arrangement covered by the application.

(4) The Minister may give the broker a permit for a specified arrangement if, having regard to the criteria prescribed by the regulations for the purposes of this subsection and to any other matters that the Minister considers appropriate, the Minister is satisfied that the activity covered by the arrangement would not prejudice the security, defence or international relations of Australia.

Note: Section 67 deals with giving permits under this Act.

(5) Without limiting subsection (4), a permit given by the Minister may do one or more of the following:

(a) cover 2 or more arrangements;
(b) cover one or more specified arrangements, where the activity covered by each arrangement is for a period specified in, or worked out in accordance with, the permit;
(c) cover one or more specified arrangements, where the activity covered by each arrangement is for a specified project.

(5) A permit given by the Minister may:

(a) be for more than one arrangement; and
(b) be for a specified arrangement, where the activity covered by the arrangement is for a period specified in, or worked out in accordance with, the permit.
Part 2  Deals in items in the Defence and Strategic Goods List
Division 2  Brokering offences

Section 17

(6) If the Minister refuses to give the broker a permit for an arrangement covered by the application, the Minister must give the broker notice of the refusal and the reasons for the refusal.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

Permit conditions

(7) A permit given to a registered broker is subject to any conditions specified in the permit.

Note: Section 17 deals with changing permit conditions.

Revoking a permit

(8) The Minister may, by writing, revoke a permit given to a registered broker under this section.

Note: See also subsection 23(3) (about automatic revocation of a permit under this section upon cancellation of the broker’s registration).

(9) However, the Minister may revoke the permit only if the Minister is satisfied that any activity covered by an arrangement authorised by the permit would prejudice the security, defence or international relations of Australia.

(10) The Minister must give the broker notice of the revocation and the reasons for the revocation. The revocation takes effect at the time the broker receives the notice.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

17  Changing permit conditions

Imposing new conditions

(1) After giving a registered broker a permit under section 16, the Minister may impose a new permit condition by giving the broker notice of the condition. The notice must include the reasons for imposing the new condition.
Removing or varying conditions

(2) The Minister may remove or vary a condition of the permit by giving the broker notice of the removal or variation. For a variation of a condition, the notice must include the reasons for the variation.

When new conditions or variations take effect

(3) The imposition of a new permit condition under subsection (1), or the variation of a permit condition under subsection (2), takes effect at the time specified in the notice, which must be at least 14 days after the day on which the notice is given.

(4) However, the notice may specify that the new permit condition or the variation takes effect at the time the broker receives the notice if the Minister is satisfied that the new permit condition or variation needs to take effect then for reasons of urgency.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

18 Breaching permit conditions

(1) A registered broker commits an offence if:
   (a) the broker is the holder of a permit under section 16; and
   (b) the broker does an act or omits to do an act; and
   (c) the act or omission breaches a condition of the permit.

Penalty: 60 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(3) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (1).
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Division 3  Registered brokers

Section 19

Division 3—Registered brokers

19  Applying to be a registered broker

A person may apply to the Minister to be registered as a broker under this Division.

Note 1: Section 66 sets out application requirements.

Note 2: Only a registered broker is able to obtain a permit under Division 2. A person may commit an offence under that Division for engaging in certain conduct without a permit.

20  Registering brokers

Minister’s decision

(1) If a person makes an application under section 19 in accordance with section 66, the Minister must decide whether or not to register the person as a broker under this Division.

(2) The Minister must, in writing, register the person as a broker under this Division if the Minister is satisfied that the person is a fit and proper person.

(3) In determining whether the person is a fit and proper person, the Minister must have regard to:

(a) any conviction of the person of an offence against a law of the Commonwealth, a State, a Territory or a foreign country punishable by imprisonment for 12 months or longer, if that offence was committed within the 10 years immediately before the application for registration; and

(b) if the person has been previously registered under this Division—whether the person breached a condition of that registration or whether that registration was cancelled; and

(c) if the person has been given a permit under this Part—whether the person has breached a condition of that permit; and

(d) the financial position of the person; and
(e) whether the application for registration contains information that is false or misleading; and

(f) if the person is a body corporate—the following matters in relation to a manager of the body corporate:
   (i) any conviction of the manager of an offence covered by paragraph (a);
   (ii) the financial position of the manager.

The Minister may have regard to any other matters that the Minister considers appropriate.

(4) If the Minister is not satisfied that the person is a fit and proper person, the Minister must refuse to register the person as a broker under this Division.

Notice of decision

(5) The Minister must give the person notice of the Minister’s decision on the application. For a decision refusing registration, the notice must set out the reasons for the refusal.

Note 1: Section 67 deals with giving notices under this Act.

Note 2: Section 68 deals with disclosing reasons for decisions.

Period of registration

(6) If the Minister registers the person as a broker under this Division, the Minister must specify in the notice under subsection (5) the day on which the registration begins. The registration is for a period of 5 years, unless cancelled earlier.

Note: Section 21 deals with renewing registration and section 23 deals with cancelling registration.

Conditions of registration

(7) A registered broker’s registration is subject to any conditions specified in the notice under subsection (5).

Note: Section 22 deals with changing conditions of registration.
Part 2  Dealings in items in the Defence and Strategic Goods List
Division 3  Registered brokers

Section 21

**Automatic revocation of permits**

(8) If a registered broker’s registration ceases to be in force (other than because the registration is cancelled), any permit held by the broker under section 16 is taken to be revoked at the time that registration ceases to be in force.

21  Renewing registration

*Application for renewal*

(1) A registered broker may apply to the Minister to renew the person’s registration (the *current registration*).

Note: Section 66 sets out application requirements.

(2) An application under subsection (1) must be made at least 3 months but not more than 6 months before the current registration is due to end.

*Minister’s decision*

(3) If a person makes an application under subsection (1) in accordance with subsection (2) and section 66, the Minister must decide whether or not to renew the person’s current registration.

(4) The Minister must, in writing, renew the person’s current registration if the Minister is satisfied that the person is a fit and proper person.

(5) In determining whether a person is a fit and proper person, the Minister must have regard to:

(a) any conviction of the person of an offence against a law of the Commonwealth, a State, a Territory or a foreign country punishable by imprisonment for 12 months or longer, if that offence was committed within the 10 years immediately before the application for renewal; and

(b) whether the person has breached a condition of the current registration; and

(c) if the person has been given a permit under this Part—whether the person has breached a condition of that permit; and
Dealings in items in the Defence and Strategic Goods List  Part 2  
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(d) the financial position of the person; and  
(e) whether the application for renewal contains information that is false or misleading; and  
(f) if the person is a body corporate—the following matters in relation to a manager of the body corporate:  
   (i) any conviction of the manager of an offence covered by paragraph (a);  
   (ii) the financial position of the manager.  

The Minister may have regard to any other matters that the Minister considers appropriate.

(6) If the Minister is not satisfied that the person is a fit and proper person, the Minister must refuse to renew the person’s current registration.

Notice of decision

(7) The Minister must give the person notice of the Minister’s decision on the application. For a decision refusing renewal, the notice must set out the reasons for the refusal.

Note 1: Section 67 deals with giving notices under this Act.

Note 2: Section 68 deals with disclosing reasons for decisions.

Minister renews registration before expiry of registration

(8) If the Minister renews the person’s current registration before the end of the period of that registration and that registration is not cancelled before the end of that period:

(a) that registration is renewed for a period of 5 years beginning on the day after the last day of the current registration, unless cancelled earlier; and

(b) that registration is renewed subject to the conditions applying to the current registration immediately before the renewal begins.

Note: Section 23 deals with cancelling registration and section 22 deals with changing conditions of registration.
Minister does not renew registration before expiry of registration

(9) If the Minister has not made a decision on the application before the end of the last day (the *expiry day*) of the current registration:
(a) that registration is taken to continue after the expiry day until the person receives notice of the Minister’s decision on the application, unless the registration is cancelled earlier; and
(b) if the Minister renews the person’s current registration:
   (i) that registration is renewed for a period of 5 years beginning on the day after the expiry day, unless cancelled earlier; and
   (ii) the conditions applying to the current registration immediately before the Minister’s decision continue to apply after the Minister’s decision.

Note: Section 23 deals with cancelling registration and section 22 deals with changing conditions of registration.

Example: An individual’s registration is due to end on 31 October (the *expiry day*). On 1 June the individual applies to renew the registration. The Minister has not decided the application by the end of 31 October.

The registration continues automatically past 31 October until the Minister decides the application. The conditions applying to the registration at the end of 31 October will continue to apply after 31 October and these may be changed under section 22.

On 1 December the Minister renews the individual’s registration. The registration is renewed for a period of 5 years beginning on 1 November.

The conditions applying to the registration immediately before the Minister’s decision on 1 December will continue to apply after that decision.

Registration may be renewed more than once

(10) A registered broker’s registration may be renewed more than once under this section.

22 Changing registration conditions

Imposing new conditions

(1) After registering a person as a broker under this Division, the Minister may impose a new condition on the broker’s registration
by giving the broker notice of the condition. The notice must include the reasons for imposing the new condition.

Removing or varying conditions

(2) The Minister may remove or vary a condition of a registered broker’s registration by giving the broker notice of the removal or variation. For a variation of a condition, the notice must include the reasons for the variation.

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.

23 Cancelling the registration of a broker

(1) The Minister may, by writing, cancel the registration of a registered broker:

(a) if the Minister is satisfied that the broker has breached a condition of the registration; or
(b) if the Minister is satisfied that the broker has breached a condition of a permit given to the broker under this Part; or
(c) if the broker is convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country punishable by imprisonment for 12 months or longer; or
(d) if the Minister is satisfied that the broker’s application under section 19 for the registration, or an application by the broker under subsection 21(1) to renew the registration, contained information that was false or misleading; or
(e) in any other circumstances that the Minister considers appropriate.

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

Note 1: Section 67 deals with giving notices under this Act.
Note 2: Section 68 deals with disclosing reasons for decisions.
Part 2  Dealings in items in the Defence and Strategic Goods List
Division 3  Registered brokers

Section 24

Automatic revocation of permits

(3) If the Minister cancels a person’s registration as a registered broker, any permit held by the person under section 16 is taken to be revoked at the time that cancellation takes effect.

24  Register of Brokers

(1) The Secretary is to maintain a register, to be known as the Register of Brokers, in which the Secretary includes the following details for each registered broker:
   (a) the name of the broker;
   (b) the day on which the broker’s registration is due to end;
   (c) a statement as to whether the broker’s registration is subject to conditions.

(2) The Register is to be maintained by electronic means.

(3) The Register is to be made available for inspection on the Department’s website.

(4) The Register is not a legislative instrument.

25  Extended meaning of conviction

A reference in this Division to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
   (a) section 19B of the Crimes Act 1914; or
   (b) a corresponding provision of a law of a State, a Territory or a foreign country.

Note: Section 19B of the Crimes Act 1914 empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.
Division 4—Other matters

25A Deciding if things prejudicial to the security, defence or international relations of Australia

For the purposes of this Part, in deciding whether a thing would, or would not, prejudice the security, defence or international relations of Australia, the Minister, a delegate of the Minister or the Secretary:

(a) must have regard to the criteria prescribed by the regulations for the purposes of this paragraph; and

(b) may have regard to any other matters that the Minister, delegate of the Minister or Secretary considers appropriate.

Note: If after applying this section in relation to a decision under this Part, a delegate of the Minister is satisfied that a thing would prejudice the security, defence or international relations of Australia, the delegate must refer the matter to the Minister to decide personally: see subsections 73(7) and (8).
Part 2  Dealings in items in the Defence and Strategic Goods List  
Division 4  Other matters  

Section 25A

Parts 3 and 4 have been removed from this draft consolidated version of the Defence Trade Controls Act 2012 as Parts 3 and 4 contain legislative measures for the Defense Trade Cooperation Treaty between Australia and the United States of America which are not relevant to the amendments relating to Strengthened Export Controls in the Defence Trade Controls Amendment Bill 2015.
Part 5—Information-gathering powers

51A Simplified outline of this Part

The Secretary can obtain information or a document from a person if it is relevant to the operation of this Act.

52 Secretary may obtain information and documents

Scope

(1) This section applies to a person if the Secretary believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Act.

Requirement

(2) The Secretary may, by notice given to the person, require the person:

(a) to give to the Secretary, within the period and in the manner specified in the notice, any such information; or

(b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents; or

(c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.

Note: Section 67 deals with giving notices under this Act.
Section 53

(3) The period specified in a notice given under subsection (2) must be at least 14 days after the notice is given.

(4) A notice under subsection (2) must set out the effect of the following provisions:
   (a) subsection (5);
   (b) section 137.1 of the Criminal Code (about giving false or misleading information);
   (c) section 137.2 of the Criminal Code (about producing false or misleading documents).

Offence

(5) A person commits an offence if:
   (a) the person is given a notice under subsection (2); and
   (b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months.

(6) Section 15.2 of the Criminal Code (extended geographical jurisdiction—category B) applies to an offence against subsection (5).

53 Copying documents—compensation

A person is entitled to be paid by the Secretary, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 52(2)(c).

54 Secretary may inspect and copy original documents

The Secretary may:
   (a) inspect a document produced under paragraph 52(2)(b); and
   (b) make and retain copies of the whole or a part of such a document.

55 Secretary may retain copies of documents

The Secretary may inspect, and retain possession of, a copy of a document produced under paragraph 52(2)(c).
56 Secretary may retain original documents

(1) The Secretary may take, and retain for as long as is reasonably necessary, possession of a document produced under paragraph 52(2)(b).

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

57 Self-incrimination

(1) A person is not excused from giving information or producing a document under section 52 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual:
   (a) the information given or the document produced; and
   (b) giving the information or producing the document; and
   (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;
are not admissible in evidence against the individual in criminal proceedings other than:
   (d) proceedings for an offence against subsection 52(5); or
   (e) proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Part.
Part 6—Record-keeping

57A Simplified outline of this Part

Persons holding permits under Part 2 must keep records of supplies or arrangements the persons make under the permits.

Persons holding approvals under section 27 must keep records of activities prescribed by the regulations.

Records must be retained for 5 years and may need to be produced to the Secretary.

58 Keeping and retaining records

Permit holders under Part 2

(1) A person must keep records of supplies that the person makes under a permit given to the person under section 11.

(2) A person must keep records of arrangements that the person makes under a permit given to the person under section 16.

Approval holders under section 27

(3) A person who holds an approval under section 27 must keep records of activities that the person does that are prescribed by the regulations for the purposes of this subsection.

Form of records

(4) Records under this section must contain the information prescribed by the regulations for the purposes of this subsection. The regulations may prescribe different information for different kinds of records.
Section 59

Retention of records

(5) The person must retain the records for a period of 5 years.

Offence

(6) A person commits an offence if:
   (a) the person is subject to a requirement under this section; and
   (b) the person contravenes the requirement.

Penalty: 30 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(8) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies to an offence against subsection (6).

59 Production of records

(1) The Secretary may, by notice given to a person who is required to keep records under section 58, require the person to produce to the Secretary, within the period and in the manner specified in the notice, such of those records as are specified in the notice.

Note: Section 67 deals with giving notices under this Act.

(2) The period specified in a notice given under subsection (1) must be at least 14 days after the notice is given.

(3) A notice under subsection (1) must set out the effect of the following provisions:
   (a) subsection (4);
   (b) section 137.1 of the Criminal Code (about giving false or misleading information);
   (c) section 137.2 of the Criminal Code (about producing false or misleading documents).

Offence

(4) A person commits an offence if:
Part 6  Record-keeping

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(a) the person is given a notice under subsection (1); and
(b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months.

(5) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies to an offence against subsection (4).

60 Secretary may inspect and copy records

The Secretary may inspect a record produced under this Part and may make and retain copies of the whole or a part of the record.

61 Secretary may retain records

(1) The Secretary may take, and retain for as long as is reasonably necessary, possession of a record produced under this Part.

(2) The person otherwise entitled to possession of the record is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the record, or a person authorised by that person, to inspect and make copies of the record.

62 Self-incrimination

(1) A person is not excused from producing a record under this Part on the ground that the production of the record might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual:
   (a) the record; and
   (b) producing the record; and
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(c) any information, document or thing obtained as a direct or indirect consequence of producing the record;
are not admissible in evidence against the individual in criminal proceedings other than:
(d) proceedings for an offence against subsection 58(6) or 59(4); or
(e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part.
Part 7—Review of decisions

62A  Simplified outline of this Part

Various decisions under this Act are subject to internal review by the Minister.

Various decisions made by the Minister personally or after an internal review are subject to review by the Administrative Appeals Tribunal.

63  Reviewable decisions

(1) For the purposes of this Part, each of the following decisions of the Minister is a reviewable decision:

(a) a decision under section 11 to refuse to give a person a permit for a supply covered by an application for a permit;

(b) a decision under section 11 to revoke a permit;

(c) a decision under subsection 11(7) or 12(1) to impose a permit condition or a decision under subsection 12(2) to vary a permit condition;

(ca) a decision under subsection 14(1) to give a person a notice;

(cb) a decision under section 14A to refuse to give a person an approval;

(cc) a decision under subsection 14A(7) to impose an approval condition;

(cd) a decision under section 14A to revoke an approval;

(ce) a decision under subsection 14B(1) to give a person a notice;

(cf) a decision under subsection 15A(1) to give a person a notice;

(cg) a decision under subsection 15B(1) to give a person a notice;
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(d) a decision under section 16 to refuse to give a person a permit for an arrangement covered by the person’s application for a permit;
(e) a decision under section 16 to revoke a permit;
(f) a decision under subsection 16(7) or 17(1) to impose a permit condition or a decision under subsection 17(2) to vary a permit condition;
(g) a decision under section 20 to refuse to register a person as a broker;
(h) a decision under section 21 to refuse to renew a person’s registration as a broker;
(i) a decision under subsection 20(7) or 22(1) to impose a registration condition or a decision under subsection 22(2) to vary a registration condition;
(j) a decision under section 23 to cancel a person’s registration as a broker;
(k) a decision under section 27 to refuse to approve a person as a member of the Australian Community;
(l) a decision under paragraph 28(1)(a) or subsection 28(2) to impose an approval condition or a decision under subsection 28(3) to vary an approval condition;
(m) a decision under section 29 to suspend an approval;
(n) a decision under section 30 to cancel an approval;
(o) a decision under section 35 to refuse to give a person a notice under subsection 35(2).

(2) For the purposes of this Part, a decision of the Secretary under subsection 14C(1) to give a person a notice is also a reviewable decision.

64 Internal review by Minister of reviewable decisions

Scope

(1) This section applies to a reviewable decision if:
   (a) the decision is one referred to in subsection 63(1) and is made by a delegate of the Minister; or
Part 7  Review of decisions

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(b) the decision is one referred to in subsection 63(2) and is made by the Secretary.

Scope

(1) This section applies to a reviewable decision if the decision is made by a delegate of the Minister.

Request for review

(2) A person affected by a reviewable decision who is dissatisfied with the decision may request the Minister to review the decision.

(3) The request must be made by written notice given to the Minister within 30 days, or such longer period as the Minister allows (either before or after the end of the 30 days), after the day on which the person is informed of the decision.

(4) The request must set out the reasons it is made.

Review of reviewable decision

(5) On receiving the person’s request, the Minister must review the reviewable decision personally.

(6) The Minister may:
   (a) affirm, vary or set aside the reviewable decision; and
   (b) if he or she sets aside the decision, make such other decision as he or she thinks appropriate.

Notice of decision

(7) The Minister must give the person notice of the decision under subsection (6), of the reasons for that decision and of the person’s right to have that decision reviewed by the Administrative Appeals Tribunal. Failure to give notice does not affect the validity of that decision.

Note 1: Section 67 deals with giving notices under this Act.

Note 2: Section 68 deals with disclosing reasons for decisions.
Section 65

Affirmation of reviewable decision by operation of law

(8) The Minister is taken, under this section, to have affirmed the reviewable decision if the person does not receive notice of the Minister’s decision on the review of the reviewable decision within 90 days after the person requested the Minister to review the reviewable decision.

65 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of:
   (a) a reviewable decision made by the Minister personally; or
   (b) a decision made by the Minister under section 64.
Section 65A

Part 8—Other matters

65A Simplified outline of this Part

This Part deals with miscellaneous matters, such as the form of applications, the giving of notices, permits or approvals, the disclosure of reasons for decisions, injunctions, forfeiture, delegations and regulations.

66 Applications under Part 2 or 3

(1) An application under a provision of Part 2 or 3 must:
   (a) be in the form approved by the Minister for the purposes of that provision; and
   (b) contain the information required by the form; and
   (c) be accompanied by any documents that the form requires; and
   (d) be accompanied by the fee (if any) prescribed by the regulations.

(2) The Minister may request an applicant to give the Minister such additional information as the Minister considers necessary to enable the Minister to decide the application.

(3) The Minister may approve in writing a form for the purposes of a provision of Part 2 or 3.

67 Notices, permits and approvals under this Act

(1) A notice, permit or approval required or permitted by this Act to be given to a person must be given to the person by one of the methods prescribed by the regulations.

(2) If a notice, permit or approval is given to a person under this Act by one of those methods, then, for the purposes of this Act, the person is taken to have received the notice, permit or approval at
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the time prescribed by, or worked out in accordance with, the regulations.

(3) This section has effect despite any provision in the *Electronic Transactions Act 1999*.

68 Disclosure of reasons for decisions

*Decisions made by the Minister or Secretary personally*

(1) If:

(a) a decision under this Act is made by the Minister personally or the Secretary personally; and

(b) reasons for the decision must be given in a notice under this Act;

the notice must not disclose any reasons whose disclosure the Minister or Secretary believes would prejudice the security, defence or international relations of Australia.

*Decisions made by the Minister personally*

(1) If:

(a) a decision under this Act is made by the Minister personally; and

(b) reasons for the decision must be given in a notice under this Act;

the notice must not disclose any reasons whose disclosure the Minister believes would prejudice the security, defence or international relations of Australia.

*Decisions made by delegates of the Minister*

(2) If:

(a) a decision under this Act is made by a delegate of the Minister under a delegation under section 73; and

(b) reasons for the decision must be given in a notice under this Act; and

(c) the delegate believes that the disclosure of some or all of the reasons would prejudice the security, defence or international relations of Australia;
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then:

(d) the delegate must refer the particular case to the Minister; and

(e) if the Minister believes that the disclosure of some or all of the reasons would prejudice the security, defence or international relations of Australia—the Minister must inform the delegate of those reasons and the notice must not disclose those reasons.

Notification

(3) If reasons are not disclosed in a notice under this Act because of subsection (1) or (2), that fact must be stated in the notice.

69 Disclosure of information and documents

(1) The Secretary may disclose any information, or give any document, obtained or generated for the purposes of this Act, to any of the following for a purpose connected with the administration of this Act (including the performance of a function, or the exercise of a power, under this Act):

(a) a Minister of the Commonwealth, a State or a Territory;
(b) the head (however described) of a Commonwealth entity;
(c) a State or Territory entity;
(d) a foreign government entity;
(e) a person or entity specified in an instrument under subsection (2).

(2) The Minister may, by legislative instrument, specify a person or entity for the purposes of paragraph (1)(e).

(3) The Secretary may disclose information under subsection (1) only if the Secretary is satisfied that the recipient of the information will not disclose the information to anyone else without the Secretary’s consent.

(4) The Secretary may give a document under subsection (1) only if the Secretary is satisfied that the recipient of the document will not disclose any of the contents of the document to anyone else without the Secretary’s consent.
Relationship with other laws

(5) Subsection (1) applies despite:
   (a) a law of the Commonwealth other than this section; and
   (b) a law of a State or a Territory.

Definitions

(6) In this section:

  Commonwealth entity means:
  (a) an Agency (within the meaning of the Financial Management and Accountability Act 1997); or
  (b) a Commonwealth authority (within the meaning of the Commonwealth Authorities and Companies Act 1997).

foreign government entity means:
  (a) the government of a foreign country or of part of a foreign country; or
  (b) an authority of the government of a foreign country; or
  (c) an authority of the government of part of a foreign country.

State or Territory entity means:
  (a) a State or Territory; or
  (b) an authority of a State or Territory.

70 Injunctions

Restraining injunctions

(1) If a person has engaged, is engaging or is proposing to engage, in conduct that is or would be an offence against this Act, the Federal Court of Australia may, on application by the Minister, grant an injunction:
   (a) restraining the person from engaging in the conduct; and
   (b) if, in the Court’s opinion, it is desirable to do so—requiring the person to do a thing.
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Performance injunctions

(2) If:
   (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
   (b) the refusal or failure is or would be an offence against this Act;
the Federal Court of Australia may, on application by the Minister, grant an injunction requiring the person to do that thing.

Interim injunctions

(3) Before deciding an application for an injunction under subsection (1) or (2), the Federal Court of Australia may grant an interim injunction:
   (a) restraining a person from engaging in conduct; or
   (b) requiring a person to do a thing.

Discharging or varying injunctions

(4) The Federal Court of Australia may discharge or vary an injunction granted under this section.

Certain limits on granting injunctions not to apply

(5) The power of the Federal Court of Australia under this section to grant an injunction restraining a person from engaging in conduct may be exercised:
   (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
   (b) whether or not the person has previously engaged in conduct of that kind.

(6) The power of the Federal Court of Australia under this section to grant an injunction requiring a person to do a thing may be exercised:
   (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
(b) whether or not the person has previously refused or failed to
do that thing.

Other powers of the Federal Court unaffected

(7) The powers conferred on the Federal Court of Australia under this
section are in addition to, and not instead of, any other powers of
the Court, whether conferred by this Act or otherwise.

71 Forfeiture

(1) If a person supplies, or attempts to supply, goods in contravention
of this Act, the goods, and any thing in which they are contained,
are forfeited to the Commonwealth.

(2) If a person supplies, or attempts to supply, DSGL technology, or
technology relating to goods, in contravention of this Act, the
technology, and any thing that contains the technology and is used
or involved in the contravention or attempted contravention, are
forfeited to the Commonwealth.

Seizure

(3) Each of the following persons may, without warrant, seize any
goods, technology or thing that is forfeited, or that the person has
reasonable grounds to believe is forfeited, to the Commonwealth
under subsection (1) or (2) and take the goods, technology or thing
before a court of summary jurisdiction:
(a) a member of the Australian Defence Force;
(b) a member or special member of the Australian Federal Police
or a member of the police force of a State or Territory;
(c) an officer of Customs (within the meaning of the Customs
Act 1901).

Role of court of summary jurisdiction

(4) If goods, technology or a thing is taken before a court of summary
jurisdiction under subsection (3):
(a) the court must inquire into the matter; and
(b) the court must:
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(i) if the court is satisfied that the goods, technology or thing is forfeited—order that the goods, technology or thing be condemned; or

(ii) if the court is not so satisfied—order that the goods, technology or thing be delivered to whoever the court is satisfied is entitled to the goods, technology or thing.

(5) Before inquiring into a matter in accordance with subsection (4), a court of summary jurisdiction may require notice of the inquiry to be given to anyone that the court thinks appropriate.

Pending prosecutions

(6) If a prosecution is pending for an offence against this Act connected with the goods, technology or thing, an order for the condemnation, or for the delivery to a person, of the goods, technology or thing must not be made until the prosecution is determined.

Storage of things

(7) Goods, technology or a thing seized under subsection (3) must be stored in accordance with the procedures prescribed by the regulations. This must be done until an order is made under subsection (4).

Destruction etc. of things

(8) Goods, technology or a thing condemned must be destroyed or otherwise dealt with in accordance with the procedures prescribed by the regulations. This must be done as soon as practicable after it is determined that the goods, technology or thing is condemned.

(9) Until the condemned goods, technology or thing is so destroyed or otherwise dealt with, the condemned goods, technology or thing must be stored in accordance with the procedures prescribed by the regulations.
72  Evidential certificates

72—Evidential certificates by Minister

(1) The Minister may certify in writing that a notice under subsection 14(1), 14B(1), 15A(1) or 15B(1) was in force in relation to a specified person and specified matters on a specified day.

(1A) The Secretary may certify in writing that a notice under subsection 14C(1) was in force in relation to a specified person and specified matters on a specified day.

(2) In any proceeding, a certificate under subsection (1) or (1A) is prima facie evidence of the matters stated in the certificate.

73  Delegation by Minister

(1) The Minister may, by writing, delegate all or any of the Minister’s functions or powers under this Act or the regulations to:

(a) the Secretary; or
(b) an SES employee, or acting SES employee, in the Department; or
(c) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Note: The expressions APS employee, SES employee and acting SES employee are defined in section 2B of the Acts Interpretation Act 1901.

(2) However, subsection (1) does not apply to the Minister’s functions or powers under subsection 11(8), section 14, subsection 14A(8), section 14B or 15A, subsection 14A(3), subsection 16(8), Part 3 or section 64, 68 or 72.

Delegation of functions or powers under Part 3

(3) The Minister may, by writing, delegate all or any of the Minister’s functions or powers under section 27 or 28 or subsection 31(8) or 32(4) to:

(a) the Secretary; or
(b) an SES employee, or acting SES employee, in the Department; or
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(c) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

(4) The Minister may, by writing, delegate all or any of the Minister’s functions or powers under section 29, 35 or 36 to:
   (a) the Secretary; or
   (b) an SES employee, or acting SES employee, in the Department.

(5) However, subsection (4) does not apply to the Minister’s power under paragraph 29(1)(c).

Limitations

(6) In performing functions or exercising powers under a delegation under this section, the delegate must comply with any directions of the Minister.

(7) A delegate must not make a decision of a kind mentioned in column 1 of an item in the following table if the delegate is satisfied that the thing mentioned in column 2 of that item would prejudice the security, defence or international relations of Australia:

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1 Decision</th>
<th>Column 2 Thing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 A decision under section 11 to refuse to give a person a permit for a supply covered by an the person’s application for a permit</td>
<td>The supply</td>
<td></td>
</tr>
<tr>
<td>1A A decision under section 14A to refuse to give a person an approval for the publication of the DSGL technology covered by the person’s application for an approval</td>
<td>The publication of that DSGL technology</td>
<td></td>
</tr>
<tr>
<td>2 A decision under section 16 to refuse to give a person a permit for an arrangement covered by the person’s application for a permit</td>
<td>The activity covered by the arrangement</td>
<td></td>
</tr>
</tbody>
</table>
Section 74

Decisions of delegates

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1 Decision</th>
<th>Column 2 Thing</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>A decision under section 27 to refuse to approve a person as a member of the Australian Community</td>
<td>The person’s holding of such an approval</td>
</tr>
</tbody>
</table>

(8) If subsection (7) applies:

(a) the delegate must refer the particular case to the Minister;
and

(b) the Minister must decide the case personally.

74 Delegation by Secretary

(1) The Secretary may, by writing, delegate all or any of the Secretary’s functions or powers under this Act or the regulations to:

(a) an SES employee, or acting SES employee, in the Department; or

(b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Note: The expressions APS employee, SES employee and acting SES employee are defined in section 2B of the Acts Interpretation Act 1901.

(2) However, subsection (1) does not apply to the Secretary’s powers under section 14C, 39 or 72.

(3) In performing functions or exercising powers under a delegation under this section, the delegate must comply with any directions of the Secretary.

74A Strengthened Export Controls Steering Group

(1) As soon as practicable after this section commences, the Minister must appoint, in writing, the members of a Strengthened Export Controls Steering Group.

(2) The Group’s functions are to advise the Minister and Research Minister on:
Section 74A

(a) the adequacy of the organisational and governmental arrangements, and the identification, assessment and management of risks, costs and administrative burden, associated with intangible transfers of DSGL technologies; and

(b) the oversight, design and delivery of a pilot program to identify the adequacy of this Act, the regulations, the implementation arrangements and the resources for regulating intangible transfers of DSGL technologies; and

(c) recommendations for amendments to this Act, the regulations and the implementation arrangements in view of the pilot program; and

(d) whether this Act, the regulations and the implementation arrangements are not more restrictive than United States export control regulations in relation to university activities.

The Group also has any other functions determined, in writing, by the Minister.

(3) The Group must:

(a) consider quarterly progress reports from participants in the pilot program on implementation of the strengthened export controls; and

(b) through its Chair, report to the Minister and the Research Minister every 6 months; and

(c) if required by the Minister and the Research Minister, provide additional reports.

(4) The Group must advise the Department in relation to obtaining appropriate technical and scientific expertise regarding Australian Government consideration of the control lists of international regimes and of the Defence and Strategic Goods List.

(5) The Group may establish subgroups to support its functions. Subgroups must report to the Group.

(6) The Group’s membership must include:

(a) Australia’s Chief Scientist, as the Chair of the Group; and

(b) no more than 4 representatives of the industry sector, one of whom is a co-Deputy Chair; and
(c) 2 representatives of the university sector nominated by Universities Australia, one of whom is the other co-Deputy Chair; and

(d) the Chief Executive Officer of the National Health and Medical Research Council, or its nominee; and

(e) the Chief Executive Officer of the Australian Research Council, or its nominee; and

(f) a representative of the Department; and

(g) a representative of the Department administered by the Research Minister.

(7) The Group must meet at least once each quarter.

(8) A quorum of the Group is constituted by the Chair, one representative referred to in paragraph (6)(b), one representative referred to in paragraph (6)(c) and the representatives referred to in paragraphs (6)(f) and (g).

(9) The Group must report every 6 months, in writing, to the Minister and the Research Minister, including any dissenting views of a member of the Group.


(11) The Defence Export Control Office must provide a secretariat for the Group.

(12) The secretariat must:

(a) prepare and circulate agendas in conjunction with the Chair; and

(b) work with the authors of agenda papers to ensure quality and timeliness; and

(c) ensure that the agenda approved by the Chair and papers are received by members at least 1 week before each meeting; and
Section 74B

(d) prepare and provide to the Chair, within 1 week of the meeting, the minutes of the meeting; and
(e) circulate the meeting outcomes to all members following clearance by the Chair, and maintain Group records.

(13) The office of a member of the Group is not a public office within the meaning of the Remuneration Tribunal Act 1973.

(14) The Group may determine the procedure to be followed in performing its functions.

(15) The Minister must cause a copy of the Group’s final report to the Minister to be tabled in each House of the Parliament within 15 sitting days of that House after the day the Minister receives the final report.

(16) The Group is abolished immediately after its final report is given to both the Minister and the Research Minister unless, before then, the Minister and the Research Minister determine, in writing, that the Group is to remain in existence until the end of a specified period.

(17) An instrument under this section is not a legislative instrument.

(18) In this section:

Research Minister means the Minister administering the Science and Industry Research Act 1949.

74B Reviews of operation of Act

(1) The Minister must cause a review of the operation of this Act (other than Parts 3 and 4) to be undertaken as soon as possible after the second anniversary of the commencement of section 10 of this Act and afterwards at intervals of not longer than 5 years.

(2) A written report of the review must be given to the Minister.

(3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.
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75 Regulations

The Governor-General may make regulations prescribing matters:
(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister’s second reading speech made in—
House of Representatives on 2 November 2011
Senate on 22 November 2011]