

How awesome are Australia's AUSGELs?



Australia's export control reform aims to facilitate trade in strategic items for Australian businesses while encouraging compliance with strengthened export control rules and procedures. Will the five recently issued Australian general export licences, or AUSGELs, help do so? Jay P. Nash discusses.

Two years after they were put forth as one of the 'risk-based approaches' recommended by the Strengthened Export Controls Steering Group ('SECSG'), and four months after the Defence Trade Control Amendment Bill 2015 ('DTC Amendment Bill') received royal assent, the Australia Defence Export Control Office ('DECO') offered five different Australian general export licences, or 'AUSGELs', as one of the ways to help balance the burden of new controls on intangible transfers of technology and brokering activities introduced by the DTC Amendment Bill.

AUSGELs are valid for five years and allow multiple exports of specified items to specified destinations, end-users, or purposes as stipulated in each AUSGEL. The availability of these general licences is a significant development in an export control system with few licence exceptions and high volumes of exports of potentially controlled items to allies such as the United States, Japan, and many of the European Union Member States.

But just how awesome are AUSGELs? The following article will seek to answer that question by providing a summary review and analysis of the five AUSGELs and a brief comparison of AUSGELs to general licences and/or licence exceptions available under other countries' export control systems.

General overview of AUSGELs

The five AUSGELs currently offered by DECO are as follows:

- AUSGEL 1:** Export and supply of dual-use goods, software and/or technology to specified destinations;
- AUSGEL 2:** Repair of dual-use goods;
- AUSGEL 3:** Repair of military goods;
- AUSGEL 4:** Military goods, software and/or technology to APS, ADF and Police; and
- AUSGEL 5:** Dual-use goods, software

and/or technology to APS, ADF and Police.

As their names imply, each AUSGEL covers specific types of items and/or uses, specific eligible destinations or item recipients. It is important to note that AUSGELs are

AUSGELs are valid for five years and allow multiple exports of specified items to specified destinations, end-users, or purposes as stipulated in each AUSGEL.

general, not 'open', licences, and therefore, traders must apply for the particular AUSGEL they would like to obtain.

There is a dedicated AUSGEL application form available via the DECO website. According to DECO, most AUSGEL applications will be decided-upon within 15 days, though it is worth noting that all AUSGEL applicants must undergo a 'compliance review' by DECO.

None of the AUSGELs is eligible to be used for an item going to a free zone or customs warehouse, to UN-sanctioned countries or entities, or when the trader knows, suspects, or is informed that the item is intended for a weapon of mass destruction ('WMD')-related end use. The chart on the following pages illustrates the key elements of each these five initial AUSGELs¹.

Observations

AUSGELs 1 to 5 were an important addition to Australia's export control system in light of the new controls and updated control list introduced by the Australian government in the first half

of 2015. Australia's export control rules provide for few licence exceptions and prior to the AUSGELs, only a standard authorisation to export controlled items was available to traders in Australia. By offering AUSGELs, the Australian government put Australia's export control system more in line with the practices of other major trading nations in reducing the licensing requirements for trade in less sensitive items and end uses with specified destinations.

The SECSG and individual traders had hoped to see the introduction of general licences or more licence exceptions as part of the overall changes to Australia's export control system, and that wish was granted, even before the strengthened export controls enter into full force on 2 April 2016. These initial AUSGELs should help facilitate trade in strategic items in three key areas:

- 1) trade between Australia and its closest allies;
- 2) companies with distribution and/or repair centers located in Australia or elsewhere in the Asia Pacific; and
- 3) supporting Australia's military and government activities abroad.

Not needing to provide specific lists of the items or end-users as part of the AUSGEL application, and DECO's 'DSGL Search' tool², should help streamline the AUSGEL application process for traders in Australia.

While they are better than no general licenses at all, this initial set of AUSGELs has some limitations when compared to the general licence and licence exception offerings in other export control systems. First, AUSGELs are neither 'open' licences nor as broad as the general and bulk licences available in other export control systems. For example, unlike the UK's open general export licences ('OGELs'), AUSGELs require an approved application rather than just a

AUSGEL no. and name	Summary of Items/ transactions covered	Items not eligible for the AUSGEL	Eligible destinations	Special features or conditions
AUSGEL 1: Export and supply of dual-use goods, software and/or technology to specified destinations	Export of dual-use goods and 'supply' of dual-use technology items on the Australia Defence and Strategic Goods List (but see exclusions) for any purpose	<ul style="list-style-type: none"> All items on the 'Sensitive List' All items on the 'Very Sensitive List' The following 22 dual-use items on the DSGL: 1A102, 1C351, 1C352, 1C353, 1C354, 1C450a.1, 1C450a.2, 4A005, 4D004, 4E001.c, 5A002.a.2, 5D002.c.1, 5E002, 7B001, 7B003, 7E104, 9A004, 9A005, 9A007.a, 9A008.d, 9A009.a, 9A117 	Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom and the United States	This AUSGEL is the only one that authorises 'supply' of intangible technology; applicants for this AUSGEL automatically received two permits, one for the export of goods and one for the supply of intangible technology
AUSGEL 2: Repair of dual-use goods	Export of dual-use goods on the DGSL imported into Australia and that are being exported for repair or replacement under warranty outside of Australia and will be re-imported into Australia, or the export of dual-use goods on the DGSL that were originally exported from Australia under license and have been imported into Australia for repair or replacement under warranty	<ul style="list-style-type: none"> All items on the 'Sensitive List' All items on the 'Very Sensitive List' The following items: All technology and software, 1A004.d, 1A006, 1A007, 1A008, 1A102, 1C101, 1C227, 1C228, 1C229, 1C230, 1C231, 1C236, 1C237, 1C240, 1C350, 1C351, 1C352, 1C353, 1C354, 1C450, 3A001.b.10, 3A001.h, 3A201, 4A005, 5A002.a.2 to 5A002.a.9, 5B002, 6A005.g, 6A008.j.3, 7B001, 7B003, 9A004, 9A005, 9A007.a, 9A008.d, 9A009.a, and 9A117 	All destinations except those under United Nations or Australia autonomous sanctions	<p>In the case of the export of imported goods for repair or replacement under warranty, the goods must not have undergone any enhancement prior to export and must be exported to the original manufacturer of the goods or to an 'Authorised Repair Center'.</p> <p>In the case of re-export of goods originally exported from Australia under licence that have been imported for repair or replacement under warranty, the goods must be re-exported to the person and country that they were imported from, and the export must take place within 5 years of the original licensed export from Australia</p>
AUSGEL 3: Repair of military goods	<p>Exports of munitions under the DSGL entries listed below, imported into Australia and that are being exported for repair or replacement under warranty outside of Australia and will be re-imported into Australia, or munitions that were originally exported from Australia under license and have been imported into Australia for repair or replacement under warranty.</p> <p>The AUSGEL is available for the following DSGL munitions only: ML5, ML6, ML7.f and ML7.g, ML9, ML10, ML11.a and ML11.b, ML12, ML13, ML14, ML15, ML16, ML17, ML18, ML20, and ML905</p>	Any and all DGSL munitions not explicitly identified as "Approved Goods" under AUSGEL 3	All destinations except those under United Nations or Australia autonomous sanctions	<p>In the case of the export of imported goods for repair or replacement under warranty, the goods must not have undergone any enhancement prior to export and must be exported to the original manufacturer of the goods or to an "Authorized Repair Center".</p> <p>In the case of re-export of goods originally exported from Australia under license that have been imported for repair or replacement under warranty, the goods must be re-exported to the person and country that they were imported from, and the export must take place within 5 years of the original licensed export from Australia</p>

AUSGEL no. and name	Summary of Items/ transactions covered	Items not eligible for the AUSGEL	Eligible destinations	Special features or conditions
AUSGEL 4: Military goods, software and/or technology to APS, ADF and Police	Export of munitions on the DSGL to a person who is a member of the Australian Defence Force, an Australian Public Service employee, an employee of the Australian Security Intelligence Organisation, an employee of the Australian Secret Intelligence Service, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and the export is received in the course of his or her duties as such a person; and, there is no intention for the goods, software and/or technology to be sold, diverted, transferred, or gifted to another person by the member receiving the export	AUSGEL 4 is not available for the following DSGL munitions Categories: ML4, M7.a-e, ML19.f, and ML903, ML906, and ML907	All destinations except those under United Nations or Australia autonomous sanctions	
AUSGEL 5: Dual-use goods, software and/or technology to APS, ADF and Police	Export of dual-use items to a person who is a member of the Australian Defence Force, an Australian Public Service employee, an employee of the Australian Security Intelligence Organisation, an employee of the Australian Secret Intelligence Service, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and the export is received in the course of his or her duties as such a person; and, there is no intention for the goods, software and/or technology to be sold, diverted, transferred, or gifted to another person by the member receiving the export	AUSGEL 5 is not available for the following dual-use items on the DSGL: all items in Category 0, 1C350, 1C351.d.4, 1C351.d.5, and 1C450	All destinations except those under United Nations or Australia autonomous sanctions	

valid registration in order to be eligible to engage in the transfer authorised by the licence. In addition, AUSGELs only are available for exports of goods or supply/publication of intangible technology (in the case of AUSGEL 1), as compared to OGELs, which include

general licences for certain transshipments and brokering activities involving strategic items.

Second, unlike its equivalent in other systems such as Japan's (which also has a licence application requirement), AUSGEL 1 only permits

exports to a limited set of destinations, whereas Japan's 'General Bulk License' allows exports to 27 different countries and its 'Special General Bulk Export License' authorises exports to even more destinations.

Finally, AUSGELs currently do not

cover several types of transfers that would be covered by licence exceptions in other export control systems, such as 'low-value shipments' of dual-use items, which may be made licence-free from Japan, Korea, and the United States in many cases.

The 'limitations' of these initial AUSGELs should be considered in a broader context. First, the main thrust of Australia's own version of 'export control reform' has been 'strengthened' export controls, with the Australian government, first and foremost, seeking to fill some of the gaps in Australia's export controls system, so it is understandable that the general

licence offerings are more focused, at least at the outset.

Second, Australia's 'standard' export licences offer more in terms of

The main thrust of Australia's own version of 'export control reform' has been 'strengthened' export controls.

potential bulk transfers (multiple items to multiple destinations) than the 'individual' or 'single' export licences offered under most export control systems, and in that sense, are somewhat like general licences themselves.

And finally, taken together with the delayed full enforcement of Australia's new controls, the Online DSGL Tool, the DSGL Assessment and In-Principle approval options, and the amount of online training and guidance that DECO has made available for traders,

Australia's AUSGELs are part of an overall effort to help facilitate trade in strategic items for Australian businesses while encouraging their compliance with strengthened export control rules and procedures.

Marks out of ten?

So, in the overall analysis, how awesome are Australia's initial AUSGELs? Even if not 'ace' just yet, they're at least a solid 'grouse', and we're likely to see more on the AUSGEL front as Australia moves ahead with its own export control reform initiative.

Links and notes

¹ This table is a summary of the key elements of the five AUSGELs and is for informational purposes, please find information for specific details about each AUSGEL and the AUSGEL application process available on the Australia Defence Export Control Office (DECO) website at <http://www.defence.gov.au/DECO/AUSGEL-General.asp>.

² Australia DECO, "Online DSGL Tool", available at <https://dsgl.defence.gov.au/Pages/Home.aspx>

Jay Nash is Principal and Asia Pacific Lead at SECURUS Strategic Trade Solutions LLC and Research Fellow, Center for Policy Research, University at Albany-SUNY.

jay.nash@securustrade.com

Fried Frank

No Borders, Know Boundaries

As trusted advisors to clients operating or investing across international borders, we are regularly called upon to provide specialist international trade and investment counsel on a wide variety of regulatory, investigative, and enforcement matters worldwide. Our practitioners draw upon a long history of senior US government and diplomatic service to deliver timely, actionable advice which combines policy acuity, deep multi-jurisdictional legal expertise, and practical business judgment. To learn more about our International Trade and Investment Practice, please visit us at:

friedfrank.com

New York | Washington DC | London | Paris | Frankfurt | Hong Kong | Shanghai | friedfrank.com
Attorney Advertising



This article has been reproduced with the permission of the author and publisher WorldECR – Copyright is retained by the author and publisher.

WorldECR Editorial Board

Michael Burton, Jacobson Burton PLLC mburton@jacobsonburton.com
Larry E. Christensen, Miller & Chevalier, Washington, DC lchristensen@milchev.com
Iain Macvay, King & Spalding, London imacvay@kslaw.com
Jay Nash, Securus Trade jay.nash@securustrade.com
Dr. Bärbel Sachs, Noerr, Berlin bärbel.sachs@noerr.com
George Tan, Global Trade Security Consulting, Singapore georgetansc@sg-gtsc.com
Stacey Winters, Deloitte, London swinters@deloitte.com

General enquiries, advertising enquiries, press releases, subscriptions: info@worldocr.com

Contact the editor, Tom Blass: tnb@worldocr.com tel +44 (0)7930405003

Contact the publisher, Mark Cusick: mark.cusick@worldocr.com tel: +44 (0)7702289830

Researcher, Cristina Rotaru: cristina.rotaru@worldocr.com

WorldECR is published by D.C. Houghton Ltd.

Information in WorldECR is not to be considered legal advice. Opinions expressed within WorldECR are not to be considered official expressions of the publisher. The publisher assumes no responsibility for errors and omissions appearing within. The publisher reserves the right to accept or reject all editorial and advertising matter. The publisher does not assume any liability for unsolicited manuscripts, photographs, or artwork.

***Single or multi-site: Do you have the correct subscription?** A single-site subscription provides WorldECR to employees of the subscribing organisation within one geographic location or office. A multi-site subscription provides WorldECR to employees of the subscribing organisation within more than one geographic location or office. Please note: both subscription options provide multiple copies of WorldECR for employees of the subscriber organisation (in one or more office as appropriate) but do not permit copying or distribution of the publication to non-employees of the subscribing organisation without the permission of the publisher. For full subscription terms and conditions, visit <http://www.worldocr.com/terms-conditions>

For further information or to change your subscription type, please contact Mark Cusick - mark.cusick@worldocr.com

© D.C. Houghton Ltd 2015. All rights reserved. Reproduction in whole or in part of any text, photograph, or illustration without express written permission of the publisher is strictly prohibited.

ISSN 2046-4797. Refer to this issue as: WorldECR [0045]

Correspondence address: D.C. Houghton Ltd, Suite 17271, 20-22 Wenlock Road, London N1 7GU, England

D.C. Houghton Ltd is registered in England and Wales (registered number 7490482) with its registered office at 20-22 Wenlock Road, London, UK

ISSUE 45. NOVEMBER 2015
www.WorldECR.com