

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Defence Trade Controls Amendment Bill 2023

No. , 2023

(Defence)

**A Bill for an Act to amend the *Defence Trade
Controls Act 2012*, and for related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title	1
2	Commencement	1
3	Schedules	2
Schedule 1—Main amendments		3
	<i>Defence Trade Controls Act 2012</i>	3
Schedule 2—Contingent amendments		29
	<i>Defence Trade Controls Act 2012</i>	29

1 **A Bill for an Act to amend the *Defence Trade***
2 ***Controls Act 2012*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Defence Trade Controls Amendment Act 2023*.

6 **2 Commencement**

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

11

EXPOSURE DRAFT

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Defence Amendment (Safeguarding Australia’s Military Secrets) Act 2023</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
1	Note:	This table relates only to the provisions of this Act as originally enacted.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.
2		
3		
4	(2)	Any information in column 3 of the table is not part of this Act.
5		Information may be inserted in this column, or information in it
6		may be edited, in any published version of this Act.
7	3 Schedules	
8	Legislation that is specified in a Schedule to this Act is amended or	
9	repealed as set out in the applicable items in the Schedule	
10	concerned, and any other item in a Schedule to this Act has effect	
11	according to its terms.	

1 Schedule 1—Main amendments
2

3 *Defence Trade Controls Act 2012*

4 1 Section 3

5 Omit:

6 (a) supply DSGL technology;

7 substitute:

8 (a) supply DSGL goods or DSGL technology;
9 (aa) provide services relating to certain DSGL goods or
10 DSGL technology;

11 2 Subsection 4(1)

12 Insert:

13 *Australian person* means:

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

20 *constitutional DSGL services*: see subsection 5B(2).

21 *constitutional supply*: see subsection 5B(1).

22 *covered security clearance* means a security clearance that:

- 23 (a) is given by the Australian Government Security Vetting
24 Agency or by another Commonwealth, State or Territory
25 agency that is authorised or approved by the Commonwealth
26 to issue security clearances; and
27 (b) is of a kind prescribed by the regulations for the purposes of
28 this definition.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 ***DSGL goods*** means goods within the scope of the Defence and
2 Strategic Goods List.
- 3 ***DSGL services*** means the giving of assistance (including training)
4 in relation to the design, development, engineering, manufacture,
5 production, assembly, testing, repair, maintenance, modification,
6 operation, demilitarisation, destruction, processing or use of:
- 7 (a) DSGL goods or DSGL technology that are within the scope
8 of Part 1 of the Defence and Strategic Goods List; or
- 9 (b) any other DSGL goods or DSGL technology that are
10 prescribed by the regulations for the purposes of this
11 paragraph; or
- 12 (c) technology relating to DSGL goods to which paragraph (a) or
13 (b) applies.
- 14 ***foreign person*** means a person other than an Australian person.
- 15 ***permanent resident of Australia*** means a person who is a
16 permanent resident within the meaning of the *Australian*
17 *Citizenship Act 2007*.
- 18 ***relevant DSGL services***: see subsection 5C(2).
- 19 ***relevant supply***: see subsection 5C(1).

3 After section 5A

21 Insert:

5B Constitutional supplies and constitutional DSGL services

- 23 (1) A supply of DSGL goods or DSGL technology is a ***constitutional***
24 ***supply*** if:
- 25 (a) the supply is made by, or on behalf of, or to:
- 26 (i) a constitutional corporation; or
- 27 (ii) a body corporate that is incorporated in a Territory; or
- 28 (iii) a body corporate that is taken to be registered in a
29 Territory under section 119A of the *Corporations Act*
30 *2001*; or
- 31 (b) the supply is made by, or on behalf of, or to:

EXPOSURE DRAFT

Main amendments **Schedule 1**

-
- 1 (i) the government of a foreign country or of part of a
2 foreign country; or
3 (ii) an authority of the government of a foreign country; or
4 (iii) an authority of the government of part of a foreign
5 country; or
6 (c) the supply is made by or to an alien (within the meaning of
7 paragraph 51(xix) of the Constitution); or
8 (d) any of the following applies to the supply:
9 (i) the supply wholly occurs outside Australia;
10 (ii) the supply is to or from a place outside Australia;
11 (iii) if the supply is the provision of access to DSGL
12 technology—at the time of the provision of access, the
13 person making the supply, or to whom the supply is
14 made, is outside Australia; or
15 (e) the supply is made in the course of constitutional trade or
16 commerce; or
17 (f) the supply occurs wholly or partly within a Territory; or
18 (g) the supply is made by way of a postal, telegraphic, telephonic
19 or other like service (within the meaning of paragraph 51(v)
20 of the Constitution).
- 21 (2) DSGL services are *constitutional DSGL services* if:
22 (a) the DSGL services are provided by, or on behalf of, or to:
23 (i) a constitutional corporation; or
24 (ii) a body corporate that is incorporated in a Territory; or
25 (iii) a body corporate that is taken to be registered in a
26 Territory under section 119A of the *Corporations Act*
27 *2001*; or
28 (b) the DSGL services are provided by, or on behalf of, or to:
29 (i) the government of a foreign country or of part of a
30 foreign country; or
31 (ii) an authority of the government of a foreign country; or
32 (iii) an authority of the government of part of a foreign
33 country; or
34 (c) the DSGL services are provided by or to an alien (within the
35 meaning of paragraph 51(xix) of the Constitution); or
36 (d) the DSGL services are provided wholly or partly outside
37 Australia; or
-

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (e) the DSGL services are provided in the course of
2 constitutional trade or commerce; or
3 (f) the DSGL services are provided wholly or partly within a
4 Territory; or
5 (g) the DSGL services are provided by way of a postal,
6 telegraphic, telephonic or other like service (within the
7 meaning of paragraph 51(v) of the Constitution).

8 *Definitions*

- 9 (3) In this section:

10 ***constitutional corporation*** means a corporation to which
11 paragraph 51(xx) of the Constitution applies.

12 ***constitutional trade or commerce*** means trade or commerce:

- 13 (a) between Australia and places outside Australia; or
14 (b) among the States; or
15 (c) within a Territory, between a State and a Territory or
16 between 2 Territories.

17 ***place*** includes:

- 18 (a) a vehicle, vessel or aircraft; and
19 (b) an area of water; and
20 (c) a fixed or floating structure or installation of any kind.

21 **5C Relevant supplies and relevant DSGL services**

22 *Relevant supply*

- 23 (1) A supply of DSGL goods or DSGL technology is a ***relevant supply***
24 unless:

- 25 (a) the supply is to any of the following:
26 (i) an Australian person;
27 (ii) a citizen or permanent resident of the United Kingdom
28 or United States of America;
29 (iii) a body corporate incorporated by or under a law of the
30 United Kingdom or United States of America, or of a
31 part of either of those countries;

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (iv) the Government of the United Kingdom or United
- 2 States of America, or the government of a part of either
- 3 of those countries;
- 4 (v) an authority of the Government of the United Kingdom
- 5 or United States of America, or the government of a part
- 6 of either of those countries; and
- 7 (b) the supply is to, or wholly occurs at, a place in Australia, the
- 8 United Kingdom or the United States of America; and
- 9 (c) the DSGL goods or DSGL technology are not excluded by a
- 10 determination in force under subsection (3); and
- 11 (d) any other requirements prescribed by the regulations for the
- 12 purposes of this paragraph are satisfied.

13 *Relevant DSGL services*

- 14 (2) DSGL services are **relevant DSGL services** unless:
- 15 (a) the DSGL services are provided to any of the following:
- 16 (i) an Australian person;
- 17 (ii) a citizen or permanent resident of the United Kingdom
- 18 or United States of America;
- 19 (iii) a body corporate incorporated by or under a law of the
- 20 United Kingdom or United States of America, or of a
- 21 part of either of those countries;
- 22 (iv) the Government of the United Kingdom or United
- 23 States of America, or the government of a part of either
- 24 of those countries;
- 25 (v) an authority of the Government of the United Kingdom
- 26 or United States of America, or the government of a part
- 27 of either of those countries; and
- 28 (b) the DSGL services are received at a place in Australia, the
- 29 United Kingdom or the United States of America; and
- 30 (c) the following are not excluded by a determination in force
- 31 under subsection (3):
- 32 (i) if the DSGL services are provided in respect of DSGL
- 33 goods—the DSGL goods;
- 34 (ii) if the DSGL services are provided in respect of DSGL
- 35 technology—the DSGL technology;

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (iii) if the DSGL services are provided in respect of
2 technology relating to DSGL goods—the DSGL goods;
3 and
4 (d) any other requirements prescribed by the regulations for the
5 purposes of this paragraph are satisfied.

6 *Excluded DSGL goods or DSGL technology*

- 7 (3) The Minister may, by legislative instrument, determine that
8 specified DSGL goods or DSGL technology are excluded for the
9 purposes of paragraph (1)(c) or (2)(c).

10 *Definition*

- 11 (4) In this section:

12 *place* includes:

- 13 (a) a vehicle, vessel or aircraft; and
14 (b) an area of water; and
15 (c) a fixed or floating structure or installation of any kind.

16 **4 Section 9A**

17 Omit:

- 18 (a) supply DSGL technology;

19 substitute:

- 20 (a) supply DSGL goods or DSGL technology;
21 (aa) provide services relating to certain DSGL goods or
22 DSGL technology;

23 **5 Section 9A (after the paragraph beginning “There are 24 offences for persons”)**

25 Insert:

- 26 The offences regarding supplies deal with the following:
27 (a) supplies of DSGL technology from a person in Australia
28 to another person outside Australia (exports);

EXPOSURE DRAFT

Main amendments **Schedule 1**

- (b) supplies of DSSL technology from a person in Australia to a foreign person (deemed exports);
- (c) supplies of DSSL goods or DSSL technology, that were previously exported or supplied from Australia, from a foreign country to another country (deemed re-exports), or within the same foreign country (deemed re-supplies).

Certain activities involving persons with a specified connection to Australia, the United Kingdom or the United States of America are excluded from being covered by the offences.

6 Section 10 (at the end of the heading)

Add “from in Australia to outside Australia”.

7 After paragraph 10(1)(b)

Insert:

- (ba) the supply is a constitutional supply; and
- (bb) the supply is a relevant supply; and

8 Subsection 10(1A)

Repeal the subsection, substitute:

Absolute liability

(1A) Absolute liability applies to paragraph (1)(ba).

Application to supplies to employees etc.

(1B) For the purposes of subsection (1), if the supplier is not an individual and supplies DSSL technology to an employee or officer of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the employee or officer).

9 Before subsection 10(2)

Insert:

EXPOSURE DRAFT

Schedule 1 Main amendments

Exceptions

10 Subsections 10(3) and (3A)

Repeal the subsections, substitute:

(3) Subsection (1) does not apply if:

- (a) the supplier is not an individual; and
- (b) the DSGL technology is supplied to an employee or officer of the supplier; and
- (c) the employee or officer is an Australian citizen or permanent resident of Australia; and
- (d) the supply occurs in the course of the employee or officer's duties as an employee or officer.

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 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, an employee of ASD, 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 in the course of the person's duties as such a person; and
- (c) the supply is made solely or primarily for a purpose prescribed by the regulations for the purposes of this paragraph.

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

(3B) Subsection (1) does not apply if:

- (a) the DSGL technology is supplied to a person who holds a covered security clearance; and
- (b) the supply is made solely or primarily for a purpose prescribed by the regulations for the purposes of this paragraph.

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

11 After section 10

Insert:

10A Offence—supply of DSGL technology in Australia to foreign person

(1) A person (the *supplier*) commits an offence if:

- (a) the supplier supplies DSGL technology to another person;
and
- (b) the other person is a foreign person; and
- (c) the supply is a constitutional supply; and
- (d) the supply is a relevant supply; and
- (e) any of the following applies:
 - (i) the place from which the supply is made and the place to which the supply is made are both in Australia;
 - (ii) the supply wholly occurs at a place in Australia;
 - (iii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, both the supplier and the other person are in Australia; and
- (f) either:
 - (i) the supplier does not hold a permit under section 11 authorising the supply; or
 - (ii) the supply contravenes a condition of a permit that the supplier holds under section 11; and
- (g) 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.

Absolute liability

(2) Absolute liability applies to paragraph (1)(c).

Application to supplies to employees etc.

(3) For the purposes of subsection (1), if the supplier is not an individual and supplies DSGL technology to an employee or officer of the supplier, the supply is taken to be a supply by the

EXPOSURE DRAFT

Schedule 1 Main amendments

1 supplier to another person (that other person being the employee or
2 officer).

3 *Exceptions*

4 (4) Subsection (1) does not apply if:

- 5 (a) the supply is of DSGL technology in relation to original
6 goods; and
- 7 (b) the supply is by an Australian Community member or by a
8 member of the United States Community; and
- 9 (c) the supply is to an Australian Community member or a
10 member of the United States Community; and
- 11 (d) the supply is for an activity referred to in Article 3(1)(a), (b),
12 (c) or (d) of the Defense Trade Cooperation Treaty; and
- 13 (e) at the time of the supply, the original goods are listed in
14 Part 1 of the Defense Trade Cooperation Munitions List; and
- 15 (f) at the time of the supply, the original goods are not listed in
16 Part 2 of the Defense Trade Cooperation Munitions List.

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

19 (5) Subsection (1) does not apply if:

- 20 (a) the DSGL technology is supplied by or to a person who is a
21 member of the Australian Defence Force, an APS employee,
22 an employee of ASIO, an employee of ASIS, an employee of
23 ASD, a member or special member of the Australian Federal
24 Police or a member of the police force of a State or Territory;
25 and
- 26 (b) the supply occurs in the course of the person's duties as such
27 a person; and
- 28 (c) the supply is made solely or primarily for a purpose
29 prescribed by the regulations for the purposes of this
30 paragraph.

31 Note: A defendant bears an evidential burden in relation to the matter in
32 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

33 (6) Subsection (1) does not apply if:

- 34 (a) the DSGL technology is supplied to a person who holds a
35 covered security clearance; and

EXPOSURE DRAFT

Main amendments **Schedule 1**

- 1 (b) the supply is made solely or primarily for a purpose
2 prescribed by the regulations for the purposes of this
3 paragraph.

4 Note: A defendant bears an evidential burden in relation to the matter in
5 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

6 (7) Subsection (1) does not apply if:

- 7 (a) the DSGL technology is supplied to a person who is an
8 employee of an employer or an officer of a body corporate;
9 and
10 (b) the supply occurs in the course of the person's duties as such
11 a person; and
12 (c) the person to whom the supply is made is a citizen or
13 permanent resident of a foreign country that is specified in an
14 instrument made for the purposes of subsection 15(4A).

15 Note: A defendant bears an evidential burden in relation to the matter in
16 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

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

19 Note: A defendant bears an evidential burden in relation to the matter in
20 subsection (8): see subsection 13.3(3) of the *Criminal Code*.

21 *Definition*

22 (9) In this section:

23 ***place*** includes:

- 24 (a) a vehicle, vessel or aircraft; and
25 (b) an area of water; and
26 (c) a fixed or floating structure or installation of any kind.

27 **10B Offence—certain supplies of DSGL goods or DSGL technology** 28 **from outside Australia**

29 (1) A person (the ***supplier***) commits an offence if:

- 30 (a) the supplier supplies (the ***current supply***) DSGL goods or
31 DSGL technology to another person; and
32 (b) the current supply is a constitutional supply; and
33 (c) the current supply is a relevant supply; and

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (d) the supplier obtained the DSGL goods or DSGL technology
2 as a direct or indirect result of the export or supply of the
3 DSGL goods or DSGL technology:
4 (i) from a place in Australia to a place outside Australia; or
5 (ii) if the earlier supply was the provision of access to
6 DSGL technology—in circumstances where, at the time
7 of the provision of access, the person providing access
8 was in Australia and the person to whom access was
9 provided was outside Australia; and
10 (e) either of the following (whether or not obtained) was
11 required in relation to the export or supply mentioned in
12 paragraph (d):
13 (i) permission (however described) under regulations made
14 under the *Customs Act 1901*;
15 (ii) a permit given under section 11 of this Act; and
16 (f) any of the following applies:
17 (i) the current supply wholly occurs at a place outside
18 Australia;
19 (ii) the current supply is from a place outside Australia;
20 (iii) if the current supply is the provision of access to DSGL
21 technology—at the time of the provision of access, the
22 supplier is outside Australia; and
23 (g) if subparagraph (f)(ii) applies:
24 (i) the current supply is to a place outside Australia; or
25 (ii) the other person is a foreign person; and
26 (h) if subparagraph (f)(iii) applies:
27 (i) at the time of the provision of access mentioned in that
28 subparagraph, the other person is outside Australia; or
29 (ii) the other person is a foreign person; and
30 (i) either:
31 (i) the supplier does not hold a permit under section 11
32 authorising the current supply; or
33 (ii) the current supply contravenes a condition of a permit
34 that the supplier holds under section 11; and
35 (j) there is no notice in force under subsection 14(1) in relation
36 to the supplier and the current supply.
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EXPOSURE DRAFT

Main amendments **Schedule 1**

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

Application to supplies to employees etc.

- (2) For the purposes of subsection (1), if the supplier is not an individual and supplies DSGL goods or DSGL technology to an employee or officer of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the employee or officer).

Absolute and strict liability

- (3) Absolute liability applies to paragraph (1)(b).
(4) Strict liability applies to paragraph (1)(e).

Exceptions

- (5) Subsection (1) does not apply if:
- (a) the current supply is of one of the following:
 - (i) goods that are an Article 3(1) US Defence Article;
 - (ii) goods that are an Article 3(3) US Defence Article;
 - (iii) DSGL technology in relation to original goods; and
 - (b) the current supply is by an Australian Community member or by a member of the United States Community; and
 - (c) the current supply is to an Australian Community member or a member of the United States Community; and
 - (d) the current 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 current supply, the following are listed in Part 1 of the Defense Trade Cooperation Munitions List:
 - (i) if the supply is of original goods or DSGL technology relating to original goods—the original goods;
 - (ii) if the supply is of incorporated goods—any of the original goods incorporated in the incorporated goods; and
 - (f) at the time of the current supply, the following are not listed in Part 2 of the Defense Trade Cooperation Munitions List:

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (i) if the supply is of original goods or DSGL technology
2 relating to original goods—the original goods;
3 (ii) if the supply is of incorporated goods—any of the
4 original goods incorporated in the incorporated goods.

5 Note: A defendant bears an evidential burden in relation to the matter in
6 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

- 7 (6) Subsection (1) does not apply if, in relation to the current supply:
8 (a) the DSGL goods or DSGL technology is supplied by or to a
9 person who is a member of the Australian Defence Force, an
10 APS employee, an employee of ASIO, an employee of ASIS,
11 an employee of ASD, a member or special member of the
12 Australian Federal Police or a member of the police force of
13 a State or Territory; and
14 (b) the supply occurs in the course of the person's duties as such
15 a person; and
16 (c) the supply is made solely or primarily for a purpose
17 prescribed by the regulations for the purposes of this
18 paragraph.

19 Note: A defendant bears an evidential burden in relation to the matter in
20 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

- 21 (7) Subsection (1) does not apply if, in relation to the current supply:
22 (a) the DSGL goods or DSGL technology is supplied to a person
23 who holds a covered security clearance; and
24 (b) the supply is made solely or primarily for a purpose
25 prescribed by the regulations for the purposes of this
26 paragraph.

27 Note: A defendant bears an evidential burden in relation to the matter in
28 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- 29 (8) Subsection (1) does not apply in the circumstances prescribed by
30 the regulations for the purposes of this subsection.

31 Note: A defendant bears an evidential burden in relation to the matter in
32 subsection (8): see subsection 13.3(3) of the *Criminal Code*.

Geographical jurisdiction

- (9) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1) of this section.

Definition

- (10) 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.

10C Offence—provision of DSGL services

- (1) A person (the **provider**) commits an offence if:
- (a) the provider provides DSGL services to another person; and
 - (b) the DSGL services are constitutional DSGL services; and
 - (c) the DSGL services are relevant DSGL services; and
 - (d) either:
 - (i) the provider is an Australian person; or
 - (ii) the DSGL services are provided at or from a place in Australia; and
 - (e) the other person is a foreign person; and
 - (f) either:
 - (i) the provider does not hold a permit under section 11 authorising the provision of the DSGL services; or
 - (ii) the provision of the DSGL services contravenes a condition of a permit that the provider holds under section 11; and
 - (g) there is no notice in force under subsection 14(1) in relation to the provider and the provision of the DSGL services.

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

EXPOSURE DRAFT

Schedule 1 Main amendments

Absolute liability

- (2) Absolute liability applies to paragraph (1)(b).

Exceptions

- (3) Subsection (1) does not apply if:

- (a) the DSGL services are provided in relation to one of the following:

- (i) goods that are an Article 3(1) US Defence Article;
- (ii) goods that are an Article 3(3) US Defence Article;
- (iii) technology, or DSGL technology, in relation to original goods; and

- (b) the DSGL services are provided by an Australian Community member or by a member of the United States Community; and

- (c) the DSGL services are provided to an Australian Community member or a member of the United States Community; and

- (d) the DSGL services are 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 provision of the DSGL services, the following are listed in Part 1 of the Defense Trade Cooperation Munitions List:

- (i) if the DSGL services are provided in relation to original goods, or technology or DSGL technology relating to original goods—the original goods;
- (ii) if the DSGL services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods; and

- (f) at the time of the provision of the DSGL services, the following are not listed in Part 2 of the Defense Trade Cooperation Munitions List:

- (i) if the DSGL services are provided in relation to original goods, or technology or DSGL technology relating to original goods—the original goods;
- (ii) if the DSGL services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods.

EXPOSURE DRAFT

Main amendments **Schedule 1**

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) does not apply if:

- (a) the DSGL services are provided in support of a supply of DSGL goods or DSGL technology, or technology relating to DSGL goods; and
- (b) the DSGL services solely consist of training with respect to, or the performance of, maintenance relating to the DSGL goods, the DSGL technology or the technology relating to DSGL goods; and
- (c) the maintenance covered by the training, or which is performed, is limited to inspection, testing, calibration or repair (including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components); and
- (d) the maintenance covered by the training, or which is performed, does not include any modification, enhancement, upgrade or other form of alteration or improvement that:
 - (i) enhances the performance or capability of the DSGL goods, the DSGL technology or the technology relating to DSGL goods; and
 - (ii) is not only an alteration or improvement in relation to the reliability or maintainability of the DSGL goods, DSGL technology or the DSGL goods to which the technology mentioned in subparagraph (i) relates.

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

(5) Subsection (1) does not apply if:

- (a) the DSGL services are provided 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, an employee of ASD, 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 provision of the DSGL services occurs in the course of the person's duties as such a person; and

EXPOSURE DRAFT

Schedule 1 Main amendments

1 (c) the DSGL services are provided solely or primarily for a
2 purpose prescribed by the regulations for the purposes of this
3 paragraph.

4 Note: A defendant bears an evidential burden in relation to the matter in
5 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

6 (6) Subsection (1) does not apply if:

7 (a) the DSGL services are provided to a person who holds a
8 covered security clearance; and

9 (b) the DSGL services are provided solely or primarily for a
10 purpose prescribed by the regulations for the purposes of this
11 paragraph.

12 Note: A defendant bears an evidential burden in relation to the matter in
13 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

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

16 Note: A defendant bears an evidential burden in relation to the matter in
17 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

18 *Geographical jurisdiction*

19 (8) Section 15.4 of the *Criminal Code* (extended geographical
20 jurisdiction—category D) applies to an offence against
21 subsection (1) of this section.

22 *Definition*

23 (9) In this section:

24 *place* includes:

25 (a) a vehicle, vessel or aircraft; and

26 (b) an area of water; and

27 (c) a fixed or floating structure or installation of any kind.

28 **12 Section 11 (heading)**

29 Repeal the heading, substitute:

11 Permits for the purposes of sections 10 to 10C

13 Subsections 11(1) to (6)

Repeal the subsections, substitute:

- (1) A person may apply to the Minister for a permit under this section to do an activity that is:
- (a) a constitutional supply of DSGL goods; or
 - (b) a constitutional supply of DSGL technology; or
 - (c) the provision of constitutional DSGL services.

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 activities by the person;
- (b) cover one or more activities by the person for a period described in the application;
- (c) cover one or more activities by the person for a project described in the application.

- (2A) An application by a person under subsection (1), that covers one or more activities by the person for a project described in the application, may also cover one or more activities 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 activity, by the person, covered by the application; and
 - (b) if subsection (2A) of this section applies—the Minister must decide whether or not to give each project participant a permit for each activity, by the participant, covered by the application.

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (4) The Minister may give the person a permit for a specified activity
2 if the Minister is satisfied that the activity would not prejudice the
3 security, defence or international relations of Australia.

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

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

- 11 (6) If the Minister refuses to give the person a permit for an activity
12 covered by the application, the Minister must give the person
13 notice of the refusal and the reasons for the refusal.

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

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

16 **14 After subsection 11(7)**

17 Insert:

- 18 (7A) Without limiting the conditions that may be specified in the permit,
19 those conditions may impose any obligations on the person to
20 whom the permit is given that the Minister reasonably considers
21 are necessary for the purposes of:
22 (a) promoting compliance with this Act, whether by the person
23 to whom the permit is given or any other person; or
24 (b) managing risks associated with persons contravening this
25 Act.
26 (7B) To avoid doubt, an obligation mentioned in subsection (7A) may
27 apply before, at or after the time an activity covered by the permit
28 is done.

29 **15 At the end of section 11**

30 Add:

- 31 (11) A notice under subsection (10) must set out the effect of
32 subsections (12) and (13).

Certain obligations to continue after revocation

- (12) If the Minister revokes a permit given to a person under this section that specifies conditions imposing obligations mentioned in subsection (7A) that apply after an activity covered by the permit is done, the permit is taken to continue in force for the purposes of:
- (a) sections 12 (changing permit conditions) and 13 (breaching permit conditions); and
 - (b) any other provision of this Act to the extent it relates to those sections.
- (13) However, the Minister must not impose a new permit condition in relation to the permit under subsection 12(1).

16 Subsection 13(3)

Repeal the subsection, substitute:

- (3) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1) of this section.

17 Section 14 (heading)

Repeal the heading, substitute:

14 Minister's notice prohibiting activities

18 Subsection 14(1)

Repeal the subsection, substitute:

- (1) If the Minister reasonably believes that, if a person were to do one of the activities mentioned in subsection (1A) in any circumstances or in particular circumstances, the activity would prejudice the security, defence or international relations of Australia, the Minister may give the person a notice:
- (a) prohibiting the person from doing the activity; or
 - (b) prohibiting the person from doing the activity unless conditions specified in the notice are complied with.

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

- (1A) The activities are as follows:

EXPOSURE DRAFT

Schedule 1 Main amendments

- 1 (a) a constitutional supply of particular DSGL goods at or from a
2 place outside Australia to a foreign person;
3 (b) a constitutional supply to another person of particular DSGL
4 technology;
5 (c) the provision of particular constitutional DSGL services.
- 6 (1B) Subsection (1A) does not apply in relation to an activity that would
7 wholly occur outside Australia unless:
8 (a) the activity would be done by or on behalf of an Australian
9 person; or
10 (b) the activity would relate to DSGL goods or DSGL
11 technology, or technology relating to DSGL goods, in
12 circumstances where the DSGL goods or DSGL technology
13 would have been obtained as a direct or indirect result of the
14 export or supply of the DSGL goods or DSGL technology:
15 (i) from a place in Australia to a place outside Australia; or
16 (ii) if that supply was the provision of access to DSGL
17 technology—in circumstances where, at the time of the
18 provision of access, the person providing access was in
19 Australia and the person to whom access was provided
20 was outside Australia.
- 21 (1C) For the purposes of subsection (1A), a supply by a person who is
22 not an individual to an employee or officer of that person is taken
23 to be a supply by the first-mentioned person to another person (that
24 other person being the employee or officer).

19 Paragraph 14(10)(a)

Repeal the paragraph, substitute:

- (a) the person does one of the following activities:
(i) supplies DSGL goods;
(ii) supplies DSGL technology;
(iii) provides DSGL services; and

20 Subsection 14(11)

Repeal the subsection, substitute:

EXPOSURE DRAFT

Main amendments **Schedule 1**

(11) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (10) of this section.

Definition

(12) 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.

21 After paragraph 15(1)(a)

Insert:

- (aa) the supply is, or is to be, a relevant supply; and

22 After paragraph 15(1A)(b)

Insert:

- (ba) the supply is, or is to be, a relevant supply; and

23 Section 25A (note)

Repeal the note, substitute:

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 may be required to refer the matter to the Minister or to a more senior delegate of the Minister: see subsections 73(7) to (10).

24 Subsection 58(1)

Omit “supplies that the person makes”, substitute “activities that the person does”.

25 Paragraph 63(1)(a)

Omit “a supply”, substitute “an activity”.

26 Subsection 73(2)

Omit “subsection 11(8), section 14”, substitute “section 11, 12 or 14”.

EXPOSURE DRAFT

Schedule 1 Main amendments

27 After subsection 73(2)

Insert:

Delegation of functions or powers under section 11 or 12

(2A) Subject to subsection (2B), the Minister may, by writing, delegate all or any of the Minister's functions or powers under section 11 or 12 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 1 or 2 position, or equivalent, in the Department.

(2B) The Minister may only delegate the Minister's functions or powers under subsection 11(8) to:

- (a) the Secretary; or
- (b) an SES employee, or acting SES employee, in the Department.

28 Subsection 73(4)

Before "29", insert "14,".

29 Subsection 73(7) (table item 1)

Repeal the table item.

30 At the end of section 73

Add:

(9) A delegate mentioned in paragraph (2A)(c) must not make a decision under section 11 to refuse to give a person a permit for an activity covered by an application for a permit, if the delegate is satisfied that the activity would prejudice the security, defence or international relations of Australia.

(10) If subsection (9) applies:

- (a) the delegate must refer the particular case to:
 - (i) the Minister; or
 - (ii) a delegate mentioned in paragraph (2A)(a) or (b); and

- 1 (b) if the case is referred to the Minister—the Minister must
2 decide the case personally; or
3 (c) if the case is referred to a delegate mentioned in
4 paragraph (2A)(a) or (b)—that other delegate (or another
5 delegate mentioned in either of those paragraphs) must
6 decide the case.

7 **31 Application of amendments—offences etc.**

- 8 (1) The amendments of section 10 of the *Defence Trade Controls Act 2012*
9 made by this Schedule apply in relation to conduct occurring on or after
10 the start day.
- 11 (2) Sections 10A, 10B and 10C of the *Defence Trade Controls Act 2012*, as
12 inserted by this Schedule, apply in relation to conduct occurring on or
13 after the start day.
- 14 (3) The amendments of section 14 of the *Defence Trade Controls Act 2012*
15 made by this Schedule apply in relation to an activity done on or after
16 the start day.
- 17 (4) The amendments of section 15 of the *Defence Trade Controls Act 2012*
18 made by this Schedule apply in relation to conduct occurring on or after
19 the start day.
- 20 (5) In this item:
21 *start day* means the day after the end of the period of 6 months
22 beginning on the day this item commences.

23 **32 Saving provision—permits**

24 If a permit given to a person under section 11 of the *Defence Trade*
25 *Controls Act 2012* is in force immediately before this item commences,
26 the permit continues in force (and may be dealt with) on and after that
27 commencement as if it had been given under that section as amended by
28 this Schedule.

29 **33 Saving provision—prohibition notices**

30 The amendments of section 14 of the *Defence Trade Controls Act 2012*
31 made by this Schedule do not affect the continuity of a notice given to a
32 person under that section that is in force immediately before this
33 Schedule commences.

EXPOSURE DRAFT

Schedule 1 Main amendments

1 **34 Saving provision—delegations**

2 The amendments of section 73 of the *Defence Trade Controls Act 2012*
3 made by this Schedule do not affect the continuity of a delegation that is
4 in force under that section immediately before this Schedule
5 commences.

Schedule 2—Contingent amendments

Defence Trade Controls Act 2012

1 After the heading to subsection 10C(3)

Insert:

(2A) Subsection (1) does not apply if:

- (a) the DSGL services are provided by a person whom a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises to perform work for, or on behalf of:
 - (i) a military organisation (within the meaning of that Part) of a foreign country; or
 - (ii) a government body (within the meaning of that Part) of a foreign country; and
- (b) the person provides the DSGL services in the course of performing the work authorised by the foreign work authorisation.

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

(2B) Subsection (1) does not apply if:

- (a) the DSGL services are provided by a person whom a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises to provide training to:
 - (i) a military organisation (within the meaning of that Part) of a foreign country; or
 - (ii) a government body (within the meaning of that Part) of a foreign country; and
- (b) the DSGL services provided solely consist of the training that is authorised by the foreign work authorisation.

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