

EXPOSURE DRAFT



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Defence Trade Legislation Amendment Regulations 2024

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2024

David Hurley
Governor-General

By His Excellency's Command

Richard Marles [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Defence

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1 Name

This instrument is the *Defence Trade Legislation Amendment Regulations 2024*.

2 Commencement

- (1) Each provision of this instrument 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	27 September 2024.	27 September 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

This instrument is made under the following:

- (a) the *Customs Act 1901*;
- (b) the *Defence Trade Controls Act 2012*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendment of the Defence Trade Controls Regulation 2013

Schedule 1—Amendment of the Defence Trade Controls Regulation 2013

Defence Trade Controls Regulation 2013

1 At the end of Part 1

Add:

5A Covered security clearance

For the purposes of paragraph (b) of the definition of *covered security clearance* in subsection 4(1) of the Act, the following kinds of security clearances are prescribed:

- (a) for a clearance given by the Australian Government Security Vetting Agency or another Commonwealth agency—a clearance at Negative Vetting 1 level or a higher level;
- (b) for a clearance given by or on behalf of a government mentioned in subparagraph (a)(ii) of the definition or an authority of any of those governments—a clearance that is suitable for permitting access to information classified as secret.

5B Requirements relating to the definitions of *relevant supply* and *relevant DSGL services*

Relevant supply

- (1) For the purposes of paragraph 5C(1)(b) of the Act, it is a requirement for a supply that is covered by subsection 5C(1A) or (1C) of the Act that the person who makes the supply has been issued, by the Department, a unique identifier described as an AUKUS Defence Export Control Client Registration Number.

Note: This requirement is an element in excluding the supply from the definition of *relevant supply*: see subsection 5C(1) of the Act.

Relevant DSGL services

- (2) For the purposes of paragraph 5C(2)(b) of the Act, it is a requirement for a provision of DSGL services covered by subsection 5C(2A) of the Act that the person who provides the DSGL services has been issued, by the Department, a unique identifier described as an AUKUS Defence Export Control Client Registration Number.

Note: This requirement is an element in excluding the services from the definition of *relevant DSGL services*: see subsection 5C(2) of the Act.

2 Section 7

Repeal the section, substitute:

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Amendment of the Defence Trade Controls Regulation 2013 **Schedule 1**

7 Exception to offences—Australian Defence Article

- (1) For the purposes of subsections 10(4), 10A(8), 10B(9) and 10C(8) of the Act, this section prescribes a circumstance in which subsections 10(1), 10A(1), 10B(1) and 10C(1) of the Act do not apply.
- (2) The circumstance is that:
 - (a) the supply of DSGL goods or DSGL technology, or provision of DSGL services, as mentioned in subsection 10(1), 10A(1), 10B(1) or 10C(1) of the Act (as the case requires):
 - (i) is by an Australian Community member to a member of the United States Community; or
 - (ii) is by a member of the United States Community to another member of the United States Community; and
 - (b) the supply, or the provision of DSGL services, is for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
 - (c) any of the following applies:
 - (i) for a supply of DSGL goods—at the time of the supply, the goods are an Australian Defence Article;
 - (ii) for a supply of DSGL technology—the DSGL technology relates to goods that, at the time of the supply, are an Australian Defence Article;
 - (iii) for the provision of DSGL services—the services are provided in relation to goods that, at the time the services are provided, are an Australian Defence Article.

Note: *Australian Defence Article* is defined in section 4.

7A Exception to offence—supply to producer of components

For the purposes of paragraph 10A(7A)(c) of the Act, the following requirements are prescribed:

- (a) the DSGL technology supplied is limited to that which is reasonably necessary for the person to whom the supply is made to produce the components;
- (b) the DSGL technology supplied is not of a kind that would enable the overall design of the DSGL goods, or any means of producing the DSGL goods as a whole, to be determined.

7B Exception to offence—foreign work authorisation

- (1) For the purposes of subsection 10A(8) of the Act, this section prescribes circumstances in which subsection 10A(1) of the Act does not apply.
- (2) A circumstance is that:
 - (a) the DSGL technology is supplied by a person in circumstances where a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises the person to perform work for, or on behalf of:
 - (i) a military organisation (within the meaning of that Part) of a foreign country; or

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Schedule 1 Amendment of the Defence Trade Controls Regulation 2013

- (ii) a government body (within the meaning of that Part) of a foreign country; and
 - (b) the supply of the DSGL technology constitutes work that is authorised by the foreign work authorisation.
- (3) A circumstance is that:
 - (a) the DSGL technology is supplied by a person in circumstances where a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises the person 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 supply of the DSGL technology constitutes training that is authorised by the foreign work authorisation.

7C Exception to offence—elapsed period

- (1) For the purposes of subsection 10B(8C) of the Act, this section prescribes periods of time after an earlier export or supply was made, in relation to kinds of DSGL goods or DSGL technology, after which subsection 10B(1) of the Act does not apply.
- (2) For DSGL goods or DSGL technology within the scope of Part 1 of the Defence and Strategic Goods List, the prescribed period is [*note: period to be confirmed*].
- (3) For DSGL goods or DSGL technology within the scope of the Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List, the prescribed period is 6 months.
- (4) For DSGL goods or DSGL technology within the scope of the Very Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List, the prescribed period is 12 months.

7D Exception to offence—supply of DSGL technology that is not a relevant supply

- (1) For the purposes of subsection 10(4) of the Act, a circumstance in which subsection 10(1) of the Act does not apply is that the supply of the DSGL technology is a supply other than a relevant supply.
 - Note: A supply of DSGL technology is a *relevant supply* unless certain circumstances apply: see subsection 5C(1) of the Act.
- (2) This section is repealed at the end of the period of 6 months beginning on the day Schedule 1 to the *Defence Trade Controls Amendment Act 2024* commences.

3 Section 8

Before “For section 25A of the Act”, insert “(1)”.

4 Section 8

Omit “the following table sets out”, substitute “this section prescribes”.

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Amendment of the Defence Trade Controls Regulation 2013 **Schedule 1**

5 Section 8

Omit “(being the supply of DSGL technology, arranging for other persons to supply goods listed in the Defence and Strategic Goods List or DSGL technology, or the publication of certain DSGL technology)”, substitute “(being the supply of, or arranging for other persons to supply, DSGL goods or DSGL technology, or the provision of DSGL services or the publication of certain DSGL technology)”.

6 Section 8 (before the table)

Insert:

- (2) The criteria set out in the following table are prescribed for a thing other than a supply mentioned in subsection (3) of this section.

7 Section 8 (table item 1, column headed “Criterion”)

Omit “the DSGL technology or the goods may go to or become available to”, substitute “the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to”.

8 Section 8 (table item 2, column headed “Criterion”)

Omit “the DSGL technology or the goods may go to or become available to”, substitute “the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to”.

9 Section 8 (table item 3, column headed “Criterion”)

Omit “the DSGL technology or the goods may be used”, substitute “the DSGL goods or DSGL technology, or the DSGL services or information provided through those services, may be used”.

10 Section 8 (table item 4, column headed “Criterion”)

Omit “the supply of the DSGL technology or the goods”, substitute “the supply of the DSGL goods or technology, the provision of the DSGL services”.

11 Section 8 (table item 5, column headed “Criterion”)

Omit “the DSGL technology or the goods”, substitute “the DSGL goods or DSGL technology, or the DSGL services or information provided through those services”.

12 Section 8 (table item 6, column headed “Criterion”)

Omit “the supply of the DSGL technology or the goods”, substitute “the supply of the DSGL goods or DSGL technology, the provision of the DSGL services”.

13 Section 8 (table item 7, column headed “Criterion”)

Omit “the DSGL technology or the goods may go to or become available to”, substitute “the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to”.

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14 Section 8 (table item 8, column headed “Criterion”)

Omit “the supply of the DSGL technology or the goods”, substitute “the supply of the DSGL goods or DSGL technology, the provision of the DSGL services”.

15 Section 8 (table item 9, column headed “Criterion”)

Omit “the DSGL technology or the goods may go to or become available to”, substitute “the DSGL goods or DSGL technology may go to or become available to, or the DSGL services or information provided through those services may be provided or become available to”.

16 Section 8 (table item 10, column headed “Criterion”)

Omit “the supply of the DSGL technology or the goods”, substitute “the supply of the DSGL goods or DSGL technology, the provision of the DSGL services”.

17 Section 8 (table item 11, column headed “Criterion”)

Omit “the DSGL technology or the goods”, substitute “the DSGL goods or DSGL technology, or the DSGL services or information provided through those services”.

18 Section 8 (table item 12, column headed “Criterion”)

Omit “the supply of the DSGL technology or the goods”, substitute “the supply of the DSGL goods or DSGL technology, the provision of the DSGL services”.

19 At the end of section 8

Add:

- (3) The criteria set out in the following table are prescribed for a supply of DSGL technology to a foreign person in Australia.

Criteria for deciding whether things prejudicial to security, defence or international relations of Australia—supply of DSGL technology to foreign person in Australia

Item	Criterion
1	The risk that the supply of the DSGL technology may: (a) adversely affect Australia’s military capability; or (b) substantially compromise an Australian defence operation; or (c) increase the military capability of a country or organisation that is a potential adversary of Australia
2	The risk that the DSGL technology may go to or become available to a country or organisation: (a) that is developing, or is reasonably suspected of developing: (i) weapons that may be capable of causing mass destruction; or (ii) the means of delivering such weapons; or (b) that supports, or is reasonably suspected of supporting, terrorism; or (c) whose actions, or foreign policies (if applicable), pose a risk of major disruption in global stability or the stability of a particular region
3	Whether preventing the supply of the DSGL technology may have an adverse effect on Australian industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia

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Amendment of the Defence Trade Controls Regulation 2013 **Schedule 1**

20 Section 24

Repeal the section, substitute:

24 Section 11 permit holders—information to be contained in records

For the purposes of subsection 58(4) of the Act, the table sets out information that must be contained in the record of activities (being supplies of DSGL goods or DSGL technology or the provision of DSGL services) done under a permit a person holds under section 11 of the Act.

Information to be contained in records of activities

Item	Information
1	A description of the DSGL goods or DSGL technology supplied, or the DSGL services provided, under the permit
2	The unique identifier given to the permit under which the permit holder supplied DSGL goods or DSGL technology or provided DSGL services
3	The name of any person to whom the permit holder supplied DSGL goods or DSGL technology, or provided DSGL services, under the permit
4	Either: (a) if the permit covers one or more activities (being supplies of DSGL goods or DSGL technology or provision of DSGL services)—the date or dates of each activity; or (b) if the permit covers activities (being supplies of DSGL goods or DSGL technology or provision of DSGL services) for a period of time or for one or more projects—the period, or periods, of time during which the permit holder conducted the activities

21 At the end of Part 6

Add:

Division 3—Other activities for which records are required

27A Other activities—information to be contained in records

For the purposes of subsection 58(4) of the Act, the table sets out information that must be contained in a record of a supply of DSGL goods or DSGL technology, or provision of DSGL services, that is required to be kept under subsection 58(3A) or (3D) of the Act.

Information to be contained in records

Item	Information
1	A description of the DSGL goods or DSGL technology supplied, or the DSGL services provided
2	The name of any person to whom the supply of DSGL goods or DSGL technology was made or the DSGL services were provided
3	The date of the supply of DSGL goods or DSGL technology, or date or dates of provision of DSGL services
4	The name of the country in which the DSGL goods or DSGL technology supplied, or the DSGL services provided, were received in relation to that supply or that provision of DSGL

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Information to be contained in records

Item	Information
	services

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Amendment of the Customs (Prohibited Exports) Regulations 1958 **Schedule 2**

Schedule 2—Amendment of the Customs (Prohibited Exports) Regulations 1958

Customs (Prohibited Exports) Regulations 1958

1 After subregulation 13EA(5)

Insert:

Certain exports to the United Kingdom or United States of America

- (5A) The exportation of goods is not prohibited under subregulation 13E(1) if:
- (a) the goods are exported in the course of a supply covered by subsection 5C(1A) of the *Defence Trade Controls Act 2012*; and
 - (b) the exporter has been issued, by the Department administered by the Defence Minister, a unique identifier described as an AUKUS Defence Export Control Client Registration Number.

Note: Subsection 5C(1A) of the *Defence Trade Controls Act 2012* excludes supplies of certain goods and DSGL technology: see paragraph (c) of that subsection.

Australian Military Sales Program items

- (5B) The exportation of goods is not prohibited under subregulation 13E(1) if:
- (a) the goods are, or are goods containing DSGL technology that is, an Australian Military Sales Program item (within the meaning of the *Defence Trade Controls Act 2012*); and
 - (b) the goods are exported in the course of a supply made in accordance with an agreement or arrangement between Australia and one or more foreign countries, including an agreement, arrangement or understanding between a Minister and an official or authority of one or more foreign countries.

2 After subregulation 13EJ(2)

Insert:

- (2A) The Defence Minister may delegate:
- (a) the power under subregulation 13E(3) to refuse to grant a permission; or
 - (b) the power under subregulation 13ED(1) to revoke a permission;
- to:
- (c) the Secretary of the Department administered by that Minister; or
 - (d) an SES employee, or acting SES employee, in that Department.

3 Subregulation 13EJ(4)

Repeal the subregulation.