



# Defence Trade Controls Act 2012

No. 153, 2012

This future law compilation was prepared on 17 July 2024 taking into account amendments made by the **Defence Trade Controls Amendment Act 2024 (No. 21, 2024)**.

The date of commencement for the incorporated amendments was unknown at the time of preparation.

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a future compilation of the *Defence Trade Controls Act 2012* that shows the expected text of the law as amended by the *Defence Trade Controls Amendment Act 2024*.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the future compilation.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**An Act to regulate dealings in certain goods,  
services and technologies, and for related purposes**

**Part 1—Preliminary**

**1 Short title**

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

**2 Commencement**

- (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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 November 2012

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Sections 3 to 9	<p>A single day to be fixed by Proclamation.</p> <p>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.</p> <p>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.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day on which the Treaty enters into force.</p>	<p>6 June 2013</p> <p>(see F2013L00903)</p>
3. Section 10	The day after the end of the period of 12 months beginning on the day the <i>Defence Trade Controls Amendment Act 2015</i> receives the Royal Assent.	2 April 2016
4. Sections 11 and 12	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day earlier than the day the Treaty enters into force.</p> <p>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.</p>	16 May 2015
5. Sections 13 to 15	The day after the end of the period of 12 months beginning on the day the <i>Defence Trade Controls Amendment Act 2015</i> receives the Royal Assent.	2 April 2016



## Section 2

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Sections 16 and 17	At the same time as the provision(s) covered by table item 4.	16 May 2015
7. Section 18	The day after the end of the period of 12 months beginning on the day the <i>Defence Trade Controls Amendment Act 2015</i> receives the Royal Assent.	2 April 2016
8. Sections 19 to 25	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.	16 May 2015
9. Sections 26 to 57	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.	6 June 2013 (see F2013L00903)
10. Subsections 58(1) and (2)	The day after the end of the period of 12 months beginning on the day the <i>Defence Trade Controls Amendment Act 2015</i> receives the Royal Assent.	2 April 2016
11. Subsections 58(3) to (8) and sections 59 to 74	At the same time as the provision(s) covered by table item 9.	6 June 2013

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Sections 74A and 75	The day this Act receives the Royal Assent.	13 November 2012

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) 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.

### 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 goods or DSGL technology;
- (b) provide DSGL services;
- (c) arrange for other persons to supply DSGL goods or to supply DSGL technology;
- (d) publish DSGL technology in Part 1 of the Defence and Strategic Goods 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.

*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).

*ASD* means the Australian Signals Directorate.

*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.

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***Australian Community facility*** means a facility covered by Article 4(1)(a) of the Defense Trade Cooperation Treaty.

***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 Military Sales Program item*** means DSGL goods or DSGL technology specified in a determination in force under section 5AA.

***Australian person*** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth, a State or a Territory; or
- (c) an individual who is an Australian citizen; or
- (d) an individual who is a permanent resident of Australia; or
- (e) 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.

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

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

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

- (a) is given:
  - (i) by the Australian Government Security Vetting Agency or by another Commonwealth agency that is authorised

- or approved by the Commonwealth to issue security clearances; or
- (ii) by or on behalf of the Government of Canada, New Zealand, the United Kingdom or the United States of America, or an authority of any of those governments; and
- (b) is of a kind prescribed by the regulations for the purposes of this definition.

***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.

***Defense Trade Cooperation Treaty*** means 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, as amended 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](http://www.austlii.edu.au)).

***DSGL goods*** means goods within the scope of the Defence and Strategic Goods List, but does not include goods constituting technology, as defined in that list, that has been produced in the course of, or for the purposes of, fundamental research.

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**DSGL services** 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 DSGL goods that are, or DSGL technology that is, within the scope of Part 1 of the Defence and Strategic Goods List.

**DSGL technology** means a thing that:

- (a) either:
  - (i) is technology, as defined in the Defence and Strategic Goods List, not including such technology that has been produced in the course of, or for the purposes of, fundamental research; or
  - (ii) is software, as defined in that list; and
- (b) is within the scope of that list.

**foreign person** means a person other than an Australian person.

**fundamental research** means basic or applied research conducted in circumstances where the results of the research:

- (a) are intended for public disclosure, or would ordinarily be published or shared broadly; and
- (b) are not subject to any restrictions on disclosure (however imposed) for purposes connected with the security or defence of Australia or any foreign country.

**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](http://www.austlii.edu.au)).

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

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**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 DSSL technology is or may be for a military end-use if the goods or DSSL 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.

**permanent resident of Australia** means a person who is a permanent resident within the meaning of the *Australian Citizenship Act 2007*.

**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;

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- (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.

***relevant DSGI services***: see subsection 5C(2).

***relevant supply***: see subsection 5C(1).

***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 DSGI technology—includes provide access to DSGI 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.

- (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.
- (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**.

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- (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

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.

**5AA Australian Military Sales Program items**

The Minister may, by legislative instrument, determine that specified DSGL goods or DSGL technology is an Australian Military Sales Program item.

**5B Constitutional supplies and constitutional DSGL services***Constitutional supplies*

- (1) A supply of DSGL goods or DSGL technology is a **constitutional supply** if:
- (a) the supply is made by, or on behalf of, or to:
    - (i) a constitutional corporation; or
    - (ii) a body corporate that is incorporated in a Territory; or
    - (iii) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
  - (b) the supply is made by, or on behalf of, or to:
    - (i) the government of a foreign country or of part of a foreign country; or
    - (ii) an authority of the government of a foreign country; or
    - (iii) an authority of the government of part of a foreign country; or
  - (c) the supply is made by or to an alien (within the meaning of paragraph 51(xix) of the Constitution); or
  - (d) the supply occurs wholly or partly outside Australia; or
  - (e) the supply is made in the course of constitutional trade or commerce; or
  - (f) the supply occurs wholly or partly within a Territory; or
  - (g) the supply is made by way of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

*Constitutional DSGL services*

- (2) DSGL services are **constitutional DSGL services** if:
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- (a) the DSGL services are provided by, or on behalf of, or to:
  - (i) a constitutional corporation; or
  - (ii) a body corporate that is incorporated in a Territory; or
  - (iii) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
- (b) the DSGL services are provided by, or on behalf of, or to:
  - (i) the government of a foreign country or of part of a foreign country; or
  - (ii) an authority of the government of a foreign country; or
  - (iii) an authority of the government of part of a foreign country; or
- (c) the DSGL services are provided by or to an alien (within the meaning of paragraph 51(xix) of the Constitution); or
- (d) the DSGL services are provided wholly or partly outside Australia; or
- (e) the DSGL services are provided in the course of constitutional trade or commerce; or
- (f) the DSGL services are provided wholly or partly within a Territory; or
- (g) the DSGL services are provided by way of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

*Definitions*

- (3) In this section:

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

***constitutional 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.

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

- (1) A supply of DSGL goods or DSGL technology is a **relevant supply** unless:
- (a) the supply is covered by subsection (1A), (1B) or (1C); and
  - (b) any requirements prescribed by the regulations for the purposes of this paragraph that apply in relation to the supply are satisfied.
- (1A) This subsection covers a supply of DSGL goods or DSGL technology if:
- (a) the supply is to any of the following:
    - (i) an Australian person;
    - (ii) a citizen or permanent resident of the United Kingdom or United States of America;
    - (iii) a body corporate incorporated by or under a law of the United Kingdom or United States of America, or of part of either of those countries;
    - (iv) the Government of the United Kingdom or United States of America, or the government of part of either of those countries;
    - (v) an authority of the Government of the United Kingdom or United States of America, or the government of part of either of those countries; and
  - (b) either:
    - (i) the supply is to, or occurs wholly at, a place in Australia, the United Kingdom or the United States of America; or
    - (ii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the person to whom the access is provided is in Australia, the United Kingdom or the United States of America; and
  - (c) the DSGL goods or DSGL technology is not:
    - (i) an Australian Military Sales Program item; or
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- (ii) excluded by a determination in force under subsection (3).
- (1B) This subsection covers a supply of DSGL goods or DSGL technology if:
  - (a) the DSGL goods or DSGL technology is:
    - (i) an Australian Military Sales Program item; or
    - (ii) any other DSGL goods or DSGL technology not excluded by a determination in force under subsection (3); and
  - (b) the supply is 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.
- (1C) This subsection covers a supply of DSGL technology if:
  - (a) the supply is to any of the following:
    - (i) a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A);
    - (ii) a body corporate incorporated by or under a law of a foreign country that is specified in an instrument under that subsection; or of part of such a country;
    - (iii) the government of a foreign country that is specified in an instrument under that subsection, or of part of such a country;
    - (iv) an authority of the government of a foreign country that is specified in an instrument under that subsection, or the government of part of such a country; and
  - (b) 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 occurs wholly 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 person providing the access and the person to whom the access is provided are in Australia; and

- (c) the DSGL goods or DSGL technology is not:
  - (i) an Australian Military Sales Program item; or
  - (ii) excluded by a determination in force under subsection (3).

*Relevant DSGL services*

- (2) DSGL services are **relevant DSGL services** unless:
  - (a) the provision of the DSGL services is covered by subsection (2A) or (2B); and
  - (b) any requirements prescribed by the regulations for the purposes of this paragraph that apply in relation to the provision of the DSGL services are satisfied.
- (2A) This subsection covers the provision of DSGL services if:
  - (a) the DSGL services are provided to any of the following:
    - (i) an Australian person;
    - (ii) a citizen or permanent resident of Canada, New Zealand, the United Kingdom or the United States of America;
    - (iii) a body corporate incorporated by or under a law of Canada, New Zealand, the United Kingdom or the United States of America, or of part of such a country;
    - (iv) the Government of Canada, New Zealand, the United Kingdom or the United States of America, or the government of part of such a country;
    - (v) an authority of the Government of Canada, New Zealand, the United Kingdom or the United States of America, or the government of part of such a country; and
  - (b) the DSGL services are received at a place in Australia, Canada, New Zealand, the United Kingdom or the United States of America; and
  - (c) the DSGL goods or DSGL technology to which the DSGL services relate is not:
    - (i) an Australian Military Sales Program item; or

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- (ii) excluded by a determination in force under subsection (3).
- (2B) This subsection covers the provision of DSGL services if:
  - (a) the DSGL goods or DSGL technology to which the DSGL services relate is:
    - (i) an Australian Military Sales Program item; or
    - (ii) any other DSGL goods or DSGL technology not excluded by a determination in force under subsection (3); and
  - (b) the DSGL services are provided 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.

### *Excluded DSGL goods or DSGL technology*

- (3) The Minister may, by legislative instrument, determine that specified DSGL goods or DSGL technology is excluded for the purposes of subsections (1A), (1B), (1C), (2A) and (2B).

### *Definitions*

- (4) 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.

## **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:

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

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

- (a) between Australia and places outside Australia; or

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- (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 DSSL goods or DSSL technology;
- (b) provide DSSL services outside Australia;
- (c) arrange for other persons to supply DSSL goods or to supply DSSL technology;
- (d) publish DSSL technology in Part 1 of the Defence and Strategic Goods List.

The offences regarding supplies deal with the following:

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

Certain activities involving persons with a specified connection to Australia, the United Kingdom or the United States of America, and in some cases certain other countries, or activities involving arrangements between countries, are excluded from being covered by the offences.

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

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- (a) supplying DSGL technology;
- (b) publishing DSGL technology;
- (c) arranging for other persons to supply DSGL goods 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 DSGL goods or to supply DSGL technology. There is a process for becoming a registered broker.

## **Division 1—Primary offences**

### **10 Offence—supply of DSGL technology from in Australia to outside Australia**

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

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- (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
- (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.

*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 DSGL technology to an officer or employee of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the officer or employee).

*Exceptions*

- (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.

**Part 2** Dealings in items in the Defence and Strategic Goods List

**Division 1** Primary offences

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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 on behalf of a person or body to an officer or employee of the person or body; and
- (b) the officer or employee is:
  - (i) an Australian citizen or permanent resident of Australia; or
  - (ii) a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A); and
- (c) the supply occurs in the course of the officer or employee's duties as an officer or employee.

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 DSGL technology is not:
  - (i) an Australian Military Sales Program item; or
  - (ii) specified in a determination in force under subsection 5C(3); or
  - (iii) prescribed by the regulations for the purposes of this subparagraph.

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:

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- (a) the DSGL technology is supplied to a person who holds a covered security clearance; and
- (b) the DSGL technology is not:
  - (i) an Australian Military Sales Program item; or
  - (ii) specified in a determination in force under subsection 5C(3); or
  - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

*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.

**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;

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- (ii) the supply occurs wholly 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 officer or employee of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the officer or employee).

*Exceptions*

- (4) 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



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- (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 (4): see subsection 13.3(3) of the *Criminal Code*.

(6) 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 DSGL technology is not:
  - (i) an Australian Military Sales Program item; or
  - (ii) specified in a determination in force under subsection 5C(3); or
  - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

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

- (a) the DSGL technology is supplied to a person who holds a covered security clearance; and
- (b) the DSGL technology is not:
  - (i) an Australian Military Sales Program item; or
  - (ii) specified in a determination in force under subsection 5C(3); or
  - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

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

- (a) the DSGL technology is supplied to a person who is producing, or is to produce, one or more components of DSGL goods; and
- (b) the supply is made in connection with the production of the components; and
- (c) any requirements prescribed by the regulations for the purposes of this paragraph are satisfied.

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

(8) 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 (8): see subsection 13.3(3) of the *Criminal Code*.

*Definitions*

(9) 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.

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

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

- (a) the supplier supplies (the **current supply**) DSGL goods, other than firearms, or DSGL technology to another person; and
- (aa) the DSGL goods or DSGL technology is within the scope of:
  - (i) Part 1 of the Defence and Strategic Goods List; or
  - (ii) the Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; or

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- (iii) the Very Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; and
- (b) the current supply is a constitutional supply; and
- (c) the current supply is a relevant supply; and
- (d) any of the following applies:
  - (i) the current supply occurs wholly at a place outside Australia;
  - (ii) the current supply is from a place outside Australia and is to a place outside Australia;
  - (iii) if the current supply is the provision of access to DSGL technology—at the time of the provision of access, the supplier is outside Australia and the other person is outside Australia; and
- (e) the supplier obtained the DSGL goods or DSGL technology as a direct or indirect result of the export or supply (the ***earlier export or supply***) of the DSGL goods or DSGL technology:
  - (i) from a place in Australia to a place outside Australia; or
  - (ii) if the earlier export or supply was the provision of access to DSGL technology—in circumstances where, at the time of the provision of access, the person providing access was in Australia and the person to whom access was provided was outside Australia; and
- (f) either of the following (whether or not obtained) was required in relation to the earlier export or supply:
  - (i) permission (however described) under regulations made under the *Customs Act 1901*;
  - (ii) a permit given under section 11 of this Act; and
- (g) either:
  - (i) the supplier does not hold a permit under section 11 authorising the current supply; or
  - (ii) the current supply contravenes a condition of a permit that the supplier holds under section 11; and
- (h) there is no notice in force under subsection 14(1) in relation to the supplier and the current supply.

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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 officer or employee of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the officer or employee).

*Absolute and strict liability*

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

*Exceptions*

- (5) Subsection (1) does not apply if:
- (a) the current supply is of:
    - (i) goods that are an Article 3(1) US Defence Article; or
    - (ii) goods that are an Article 3(3) US Defence Article; or
    - (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 in relation 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

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- (f) at the time of the current supply, the following are not listed in Part 2 of the Defense Trade Cooperation Munitions List:
  - (i) if the supply is of original goods or DSGL technology in relation to original goods—the original goods;
  - (ii) if the supply is of incorporated goods—any of the original goods incorporated in the incorporated goods.

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

- (6) Subsection (1) does not apply if, in relation to the current supply:
  - (a) the DSGL goods or DSGL technology is supplied by or on behalf of a person or body to an officer or employee of the person or body; and
  - (b) the officer or employee is:
    - (i) an Australian citizen or permanent resident of Australia; or
    - (ii) a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A); and
  - (c) the supply occurs in the course of the officer or employee's duties as an officer or employee.

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

- (7) Subsection (1) does not apply if, in relation to the current supply:
  - (a) the DSGL goods or 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 DSGL goods or DSGL technology is not:
    - (i) an Australian Military Sales Program item; or

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- (ii) specified in a determination in force under subsection 5C(3); or
- (iii) prescribed by the regulations for the purposes of this subparagraph.

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

- (8) Subsection (1) does not apply if, in relation to the current supply:
- (a) the DSGL goods or DSGL technology is supplied to a person who holds a covered security clearance; and
  - (b) the DSGL goods or DSGL technology is not:
    - (i) an Australian Military Sales Program item; or
    - (ii) specified in a determination in force under subsection 5C(3); or
    - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

- (8A) Subsection (1) does not apply if the earlier export or supply, the current supply or any intervening supply of the DSGL goods or DSGL technology is to the person who originally produced the DSGL goods or DSGL technology.

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

- (8B) Subsection (1) does not apply if:
- (a) the DSGL goods or DSGL technology is within the scope of:
    - (i) the Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; or
    - (ii) the Very Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; and
  - (b) any of the following applies:
    - (i) the current supply occurs wholly at a place in a foreign country that is specified in an instrument under subsection 15(4A);

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- (ii) the current supply is from or to a place in a foreign country that is specified in an instrument under subsection 15(4A);
- (iii) if the current supply is the provision of access to DSGL technology—at the time of the provision of access, the supplier or the other person mentioned in paragraph (1)(a) is in a foreign country that is specified in an instrument under subsection 15(4A).

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

- (8C) Subsection (1) does not apply if a period prescribed by the regulations for the purposes of this subsection, in relation to DSGL goods or DSGL technology of that kind, has elapsed since the day the earlier export or supply was made.

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

- (8D) Subsection (1) does not apply if:

- (a) the earlier export or supply was made in accordance with a permission or permit mentioned in paragraph (1)(f); and
- (b) the permission or permit was granted before the commencement of this section.

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

- (9) 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 (9): see subsection 13.3(3) of the *Criminal Code*.

*Geographical jurisdiction*

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

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*Definitions*

(11) 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 outside Australia**

- (1) A person (the ***provider***) commits an offence if:
- (a) the provider provides DSGL services to another person; and
  - (b) the other person is a foreign person; and
  - (c) the DSGL services are constitutional DSGL services; and
  - (d) the DSGL services are relevant DSGL services; and
  - (e) the provider is an Australian person; and
  - (ea) the provider provides the DSGL services at or from a place outside Australia; and
  - (eb) the other person receives the DSGL services at a place outside Australia; 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.

*Absolute liability*

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



*Exceptions*

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

- (a) the DSGL services are provided 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
  - (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 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 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*.

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

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

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- (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 DSGL technology in relation 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 DSGL technology in relation 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.

**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 by or on behalf of a person or body to an officer or employee of the person or body; and
  - (b) the officer or employee is a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A); and

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- (c) the provision of the DSGL services occurs in the course of the officer or employee's duties as an officer or employee.

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 in support of a lawful supply of DSGL goods or DSGL technology; and
- (b) the DSGL services solely consist of training with respect to, or the performance of, maintenance relating to the DSGL goods or DSGL technology; 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 or DSGL technology; and
  - (ii) is not only an alteration or improvement in relation to the reliability or maintainability of the DSGL goods or DSGL technology.

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

(6) 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

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- (c) the DSGL services are not provided in relation to DSGL goods or DSGL technology that is:
  - (i) an Australian Military Sales Program item; or
  - (ii) specified in a determination in force under subsection 5C(3); or
  - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

- (7) Subsection (1) does not apply if:
  - (a) the DSGL services are provided to a person who holds a covered security clearance; and
  - (b) the DSGL services are not provided in relation to DSGL goods or DSGL technology that is:
    - (i) an Australian Military Sales Program item; or
    - (ii) specified in a determination in force under subsection 5C(3); or
    - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

- (7A) Subsection (1) does not apply if:
  - (a) the DSGL services are provided in connection with a lawful supply of DSGL goods or DSGL technology that occurred before the commencement of this section; and
  - (b) the DSGL services are provided under a contract, agreement or arrangement entered into before the commencement of this section.

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

- (8) 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 (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.

*Definitions*

- (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.

## **11 Permits for the purposes of sections 10 to 10C**

- (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 one or more projects described in the application.

- (2A) An application by a person under subsection (1), that covers one or more activities by the person for one or more projects 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 those projects.

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### *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.
- (4) The Minister may give a person a permit for a specified activity if the Minister is satisfied that the activity 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 activities;
  - (b) cover one or more specified activities for a period specified in, or worked out in accordance with, the permit;
  - (c) cover one or more specified activities for one or more specified projects.
- (6) If the Minister refuses to give a person a permit for an activity 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.

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

*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.

- (11) A notice under subsection (10) must set out the effect of 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

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(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).

## 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.

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

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

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

## 14 Minister's notice prohibiting activities

- (1) If the Minister reasonably believes that, if a person were to do one of the activities covered by 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:

- (a) a constitutional supply of particular DSGL goods at or from a place outside Australia to a foreign person;
- (b) a constitutional supply to another person of particular DSGL technology;
- (c) the provision of particular constitutional DSGL services.

- (1B) Subsection (1A) does not cover an activity that would occur wholly outside Australia unless:

- (a) the activity would be done by or on behalf of an Australian person; or
- (b) the activity would relate to DSGL goods or DSGL technology in circumstances where the DSGL goods or DSGL technology would have been obtained as a direct or

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indirect result of the export or supply of the DSGL goods or DSGL technology:

- (i) from a place in Australia to a place outside Australia; or
- (ii) if that supply were the provision of access to DSGL technology—in circumstances where, at the time of the provision of access, the person providing access was in Australia and the person to whom access was provided was outside Australia.

(1C) For the purposes of subsection (1A), a supply by a person who is not an individual to an officer or employee of that person is taken to be a supply by the first-mentioned person to another person (that other person being the officer or employee).

(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.

*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:
    - (i) supplies DSGL goods; or
    - (ii) supplies DSGL technology; or
    - (iii) provides DSGL services; and
  - (b) the supply of the DSGL goods or DSGL technology, or provision of the DSGL services, 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 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (10) of this section.

*Definitions*

- (12) In this section:

***place*** includes:

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

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- (b) an area of water; and
- (c) a fixed or floating structure or installation of any kind.

**14A Offence—publishing DSGL technology in Part 1 of the Defence and Strategic Goods List**

- (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.

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- (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.

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*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.

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*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 DSGT 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).

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**14C Secretary's notice prohibiting publication of DSSL 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 DSSL 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 DSSL 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.



*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).

## Division 2—Brokering offences

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

*Offence—brokering involving Part 1 of the Defence and Strategic Goods List*

- (1) A person (the **first person**) commits an offence if:
- (a) either:
    - (i) the first person arranges for another person to supply DSGL goods, where the DSGL 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
  - (aa) the supply is, or is to be, a relevant supply; 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.

*Offence—brokering involving Part 2 of the Defence and Strategic Goods List and military-end use*

- (1A) A person (the **first person**) commits an offence if:
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- (a) either:
  - (i) the first person arranges for another person to supply DSGL goods, where the DSGL 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 DSGL goods or DSGL technology will or may be for a military end-use; and
- (ba) the supply is, or is to be, a relevant supply; 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, 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) 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*.

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- (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:

(a) either:

(i) the first person arranges for the other person to supply the DSGL 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

(c) that foreign country is specified in an instrument under subsection (4A).

Note: A defendant bears an evidential burden in relation to the matters 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).

- (4AA) The Minister must not specify a foreign country in an instrument made under subsection (4A) unless:

(a) the 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; or

(b) the Minister is satisfied that specifying the foreign country in the instrument is in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being.

- (4B) Subsection (1) or (1A) does not apply if the first person arranges for the other person to supply the DSGL 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 Part 2 of the Defence and Strategic Goods List and 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 DSGL goods, where the DSGL 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 DSGL 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.

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*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:

***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 Defence and Strategic Goods List**

- (1) If the Minister reasonably believes that, if:
- (a) a person (the ***first person***) were to arrange for another person to supply particular DSGL goods from a place outside Australia to another place outside Australia; or

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- (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.

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.

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*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.

*Offence*

- (10) The first person commits an offence if:
- (a) either:
    - (i) the first person arranges for another person to supply DSGL goods, where 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 Defence and Strategic Goods List**

- (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 DSGL 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.

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### *Offence*

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

(a) either:

- (i) the first person arranges for another person to supply DSGL goods, where the DSGL 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.

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**

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

- (a) arrange for another person to supply DSGL goods; 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 DSGL 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 DSGL 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 DSGL goods for a particular project.

*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 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.

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- (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).

## **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.

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### *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



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- (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 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.

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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.

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- (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.

### *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.

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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 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).

## **Part 3—Defense Trade Cooperation Treaty**

### **Division 1—Simplified outline of this Part**

#### **26 Simplified outline of this Part**

This Part implements the Defense Trade Cooperation Treaty between Australia and the United States of America.

There is a process for approving bodies corporate as members of the Australian Community referred to in Article 4(1)(c) of that treaty and for suspending or cancelling approvals.

There are offences relating to dealings in Article 3(1) US Defence Articles and Article 3(3) US Defence Articles.

There is a process for transitioning to that treaty.

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## **Division 2—Membership of the Australian Community**

### **27 Approval of bodies corporate as members of the Australian Community**

- (1) A person who is a body corporate may apply to the Minister for approval as a member of the Australian Community referred to in Article 4(1)(c) of the Defense Trade Cooperation Treaty.

Note 1: Section 66 sets out application requirements.

Note 2: Sections 10 to 10C (about offences for certain activities relating to DSSL goods or DSSL technology) contain exceptions that apply in relation to the holder of an approval.

#### *Minister's decision*

- (2) If a person makes an application under subsection (1) in accordance with section 66, the Minister must, in writing, approve, or refuse to approve, the person as a member of the Australian Community.
- (3) In deciding whether to approve the person as a member of the Australian Community, the Minister must have regard to:
- (a) whether the person has access to a facility that is included, or that is capable of being included, on a list, managed by the Department, of facilities accredited for storing and handling classified information and material; and
  - (b) any conviction of the person of:
    - (i) an offence against this Act or the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*; or
    - (ii) an offence against the *Customs Act 1901* or regulations made under that Act; or
    - (iii) an offence against the Arms Export Control Act of the United States of America (22 United States Code, Chapter 39) or the International Traffic in Arms Regulations (22 Code of Federal Regulations, Parts 120-130) made under that Act;



if that offence was committed within the 10 years immediately before the application for approval; and

- (c) whether the person's holding of such an approval would prejudice the security, defence or international relations of Australia; and
- (d) whether the application for approval contains information that is false or misleading; and
- (e) the extent of any foreign ownership or control (whether direct or indirect) of the body corporate; and
- (f) the following matters in relation to a manager of the body corporate:
  - (i) any conviction of the manager of an offence covered by paragraph (b);
  - (ii) whether the manager is an Australian citizen.

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

- (4) The Minister must not approve the person as a member of the Australian Community unless the Minister is satisfied that the Government of the United States of America has agreed in writing to the approval being given.

- (5) If the Minister approves the person as a member of the Australian Community, the Minister must give the person the approval.

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

Note 2: Section 28 deals with approval conditions.

- (6) If the Minister refuses to approve the person as a member of the Australian Community, 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.

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### *When approval begins*

- (7) If the Minister approves the person as a member of the Australian Community, the Minister must specify in the approval the day on which the approval begins.

### *Extended meaning of conviction*

- (8) A reference in this section 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 the United States of America.

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.

### *Approval not a legislative instrument*

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

## **28 Approval conditions**

### *Conditions of an approval*

- (1) An approval given to a person under section 27 is subject to:
- (a) any conditions specified in the approval; and
  - (b) a condition that the person must allow an authorised officer, in accordance with section 41, to enter any premises referred to in that section for the purpose of finding out whether the person has complied with this Part or Part 6 or another condition of the approval; and

Note: Part 4 sets out the monitoring powers that an authorised officer may exercise in relation to those premises.

- (c) any conditions prescribed by the regulations in relation to:
  - (i) access to Article 3(1) US Defence Articles or Article 3(3) US Defence Articles in the person's possession, custody or control; or
  - (ii) access to technology relating to original goods, being technology in the person's possession, custody or control; and
- (d) any conditions prescribed by the regulations in relation to:
  - (i) investigating or reporting the loss, theft or destruction of Article 3(1) US Defence Articles or Article 3(3) US Defence Articles in the person's possession, custody or control; or
  - (ii) investigating or reporting the loss, theft or destruction of technology relating to original goods, being technology in the person's possession, custody or control; and
- (e) any conditions prescribed by the regulations in relation to:
  - (i) the marking, handling or storing of Article 3(1) US Defence Articles or Article 3(3) US Defence Articles in the person's possession, custody or control; or
  - (ii) the marking, handling or storing of technology relating to original goods, being technology in the person's possession, custody or control; and
- (f) in relation to defence services provided by the person in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or to technology relating to original goods—any conditions prescribed by the regulations in relation to the provision, by the person to the recipient of the services, of documentation:
  - (i) for defence services provided in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article—identifying the goods; or
  - (ii) for defence services provided in relation to technology relating to original goods—identifying the technology and the goods; and

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- (g) any conditions prescribed by the regulations in relation to the person giving reports relating to the person's compliance with this Act and the regulations; and
- (h) any conditions prescribed by the regulations in relation to Australian Defence Articles (within the meaning of the regulations) in the person's possession, custody or control.

### *Changing approval conditions*

- (2) After giving the approval, the Minister may impose a new approval condition by giving the person notice of the condition. The notice must include the reasons for imposing the new condition.
- (3) The Minister may remove or vary a condition of the approval imposed under paragraph (1)(a) or subsection (2) 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.

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

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

### *Ordinary offence*

- (4) A person commits an offence if:
  - (a) the person is the holder of an approval under section 27; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission breaches a condition of the approval; and
  - (d) the condition is one covered by paragraph (1)(c), (d), (e) or (f) of this section.

Penalty: 600 penalty units.

### *Strict liability offence*

- (5) A person commits an offence if:
  - (a) the person is the holder of an approval under section 27; and
  - (b) the person does an act or omits to do an act; and

(c) the act or omission breaches a condition of the approval.

Penalty: 300 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

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

*Geographical jurisdiction*

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

*Notice not a legislative instrument*

(8) A notice under subsection (2) or (3) is not a legislative instrument.

## **29 Suspending an approval**

(1) The Minister may, by writing, suspend an approval given to a person under section 27:

- (a) if the Minister reasonably believes that the person has contravened a provision of this Act; or
- (b) if the Minister reasonably believes that the person has breached a condition of the approval; or
- (c) if the Minister is satisfied that the person's holding of the approval prejudices the security, defence or international relations of Australia; or
- (d) if the Minister is satisfied that the person's application under section 27 for the approval contained information that was false or misleading; or
- (e) if the Minister is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Minister gave the approval; or
- (f) in any other circumstances prescribed by the regulations for the purposes of this paragraph.

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- (2) The Minister must give the person notice of the suspension and the reasons for the suspension. The suspension 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.

- (3) The Minister must specify in the notice under subsection (2):
- (a) a period of suspension (which must not be more than 60 days); or
  - (b) one or more conditions for the lifting of the suspension.

### *Lifting of suspension*

- (4) If 2 or more conditions are specified for the lifting of the suspension, one of them may be that a specified period of suspension has ended (which must not be more than 60 days).
- (5) If:
- (a) the Minister specifies one or more conditions for the lifting of the suspension; and
  - (b) the Minister is satisfied that those conditions have been met;
- the Minister may, by notice given to the person, lift the suspension. The suspension is lifted at the time the person receives the notice.

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

### *Effect of suspension*

- (6) Subject to subsection (7), the holder of an approval under section 27 that is suspended under this section is taken not to hold the approval at any time while the suspension has effect.
- (7) If an approval given to a body corporate under section 27 is suspended under this section:
- (a) for the purposes of the application of sections 28, 31, 32 and 33, Part 4 and subsection 58(3) to the body corporate—the body corporate is taken to continue to hold the approval while the suspension has effect; and

- (b) for the purposes of the application of sections 31, 32 and 33 to a person referred to in paragraph (c) of the definition of ***Australian Community member*** in subsection 4(1)—the body corporate is taken to continue to hold the approval while the suspension has effect.
- (8) An approval under section 27 may be cancelled under section 30 even while it is suspended under this section.

*Non-legislative instruments*

- (9) The following are not legislative instruments:
  - (a) a suspension under this section;
  - (b) a notice under subsection (5).

### **30 Cancelling an approval**

- (1) The Minister may, by writing, cancel an approval given to a person under section 27:
  - (a) if the Minister reasonably believes that the person has contravened a provision of this Act; or
  - (b) if the Minister reasonably believes that the person has breached a condition of the approval; or
  - (c) if the Minister is satisfied that the person's holding of the approval prejudices the security, defence or international relations of Australia; or
  - (d) if the Minister is satisfied that the person's application under section 27 for the approval contained information that was false or misleading; or
  - (e) if the person requests the Minister, in writing, to cancel the approval; or
  - (f) if the Minister is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which the Minister gave the approval; or
  - (g) in any other circumstances prescribed by the regulations for the purposes of this paragraph.

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- (2) The Minister must give the person notice of the cancellation and the reasons for the cancellation. The cancellation 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.

- (3) A cancellation under this section is not a legislative instrument.



## Division 3—Main offences

### 31 US Defence Articles listed in the Defense Trade Cooperation Munitions List

#### *Dealings outside Australia and the USA*

- (1) An Australian Community member (the ***supplier***) commits an offence if:
  - (a) the supplier supplies goods, or supplies technology relating to goods, where the supply is to a place that is outside Australia and is outside the United States of America; and
  - (b) the supply is of goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the supply is of technology relating to original goods; and
  - (c) there is no notice in force under subsection (8) in relation to the supplier and the supply; and
  - (d) at the time of the supply, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
    - (i) if the supply is of original goods or is of 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.

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

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

- (2) An Australian Community member (the ***provider***) commits an offence if:
  - (a) the provider provides defence services in relation to goods or in relation to technology relating to goods, where the defence services are received at a place that is outside Australia and is outside the United States of America; and

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- (b) the defence services are provided in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the defence services are provided in relation to technology relating to original goods; and
- (c) there is no notice in force under subsection (8) in relation to the provider and the provision of the defence services; and
- (d) at the time of the provision of the defence services, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
  - (i) if the defence services are provided in relation to original goods or in relation to technology relating to original goods—the original goods;
  - (ii) if the defence services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods.

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

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

*Dealings in Australia or the USA outside the Treaty framework*

- (3) An Australian Community member (the **supplier**) commits an offence if:
  - (a) the supplier supplies goods, or supplies technology relating to goods, where the supply is to a place in Australia or in the United States of America; and
  - (b) the supply is of goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the supply is of technology relating to original goods; and
  - (c) the supply is to none of the following:
    - (i) the Commonwealth;
    - (ii) an Australian Community member;
    - (iii) an Australian Community facility;
    - (iv) a member of the United States Community; and

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- (d) there is no notice in force under subsection (8) in relation to the supplier and the supply; and
- (e) at the time of the supply, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
  - (i) if the supply is of original goods or is of 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.

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

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

- (4) An Australian Community member (the *provider*) commits an offence if:
  - (a) the provider provides defence services in relation to goods or in relation to technology relating to goods, where the defence services are received at a place in Australia or in the United States of America; and
  - (b) the defence services are provided in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the defence services are provided in relation to technology relating to original goods; and
  - (c) the provision of the defence services is to none of the following:
    - (i) the Commonwealth;
    - (ii) an Australian Community member;
    - (iii) a member of the United States Community; and
  - (d) there is no notice in force under subsection (8) in relation to the provider and the provision of the defence services; and
  - (e) at the time of the provision of the defence services, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
    - (i) if the defence services are provided in relation to original goods or in relation to technology relating to original goods—the original goods;

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- (ii) if the defence services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods.

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

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

*Dealings in Australia or the USA within the Treaty framework*

- (5) An Australian Community member (the **supplier**) commits an offence if:
  - (a) the supplier supplies goods, or supplies technology relating to goods, where the supply is to:
    - (i) a place in Australia or in the United States of America; and
    - (ii) the Commonwealth, an Australian Community member, an Australian Community facility or a member of the United States Community; and
  - (b) the supply is of goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the supply is of technology relating to original goods; and
  - (c) neither of the following apply:
    - (i) the supply is for an activity referred to in Article 3(1)(a), (b) or (c) of the Defense Trade Cooperation Treaty, being an activity that is publicly identified in accordance with paragraph (5) of Section 2 of the Implementing Arrangements;
    - (ii) the supply is for an activity referred to in Article 3(1)(d) of the Defense Trade Cooperation Treaty, being an activity that is open to participation by Australian Community members as mentioned in paragraph (1)(b) of Section 3 of the Implementing Arrangements; and
  - (d) there is no notice in force under subsection (8) in relation to the supplier and the supply; and

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- (e) at the time of the supply, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
  - (i) if the supply is of original goods or is of 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.

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

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

- (6) An Australian Community member (the *provider*) commits an offence if:
  - (a) the provider provides defence services in relation to goods or in relation to technology relating to goods, where the defence services are received:
    - (i) at a place in Australia or in the United States of America; and
    - (ii) by the Commonwealth, an Australian Community member or a member of the United States Community; and
  - (b) the defence services are provided in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the defence services are provided in relation to technology relating to original goods; and
  - (c) neither of the following apply:
    - (i) the defence services are for an activity referred to in Article 3(1)(a), (b) or (c) of the Defense Trade Cooperation Treaty, being an activity that is publicly identified in accordance with paragraph (5) of Section 2 of the Implementing Arrangements;
    - (ii) the defence services are for an activity referred to in Article 3(1)(d) of the Defense Trade Cooperation Treaty, being an activity that is open to participation by Australian Community members as mentioned in

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paragraph (1)(b) of Section 3 of the Implementing Arrangements; and

- (d) there is no notice in force under subsection (8) in relation to the provider and the provision of the defence services; and
- (e) at the time of the provision of the defence services, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
  - (i) if the defence services are provided in relation to original goods or in relation to technology relating to original goods—the original goods;
  - (ii) if the defence services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods.

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

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

*Exception—regulations*

- (7) Subsection (1), (2), (3), (4), (5) or (6) 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 (7): see subsection 13.3(3) of the *Criminal Code*.

*Notice approving supply or provision of defence services*

- (8) The Minister may, by notice given to an Australian Community member, approve one or more supplies, or approve the provision of one or more defence services, specified in the notice.

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

*Geographical jurisdiction*

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

*Notice not a legislative instrument*

- (10) A notice under subsection (8) is not a legislative instrument.

*Definition*

- (11) 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.

**32 US Defence Articles exempt from the scope of the Defense Trade Cooperation Treaty**

*Dealings in US Defence Articles prior to authorisation*

- (1) An Australian Community member commits an offence if:
- (a) the member supplies goods or supplies technology relating to goods; and
  - (b) the supply is of goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the supply is of technology relating to original goods; and
  - (c) at the time of the supply, the following is listed in Part 2 of the Defense Trade Cooperation Munitions List:
    - (i) if the supply is of original goods or is of 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
  - (d) at the time of the supply, there is neither a licence or other authorisation granted by the Government of the United States of America, nor a notice under subsection (4), in force in relation to the Australian Community member and in relation to:
    - (i) if the supply is of original goods—the original goods; or

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- (ii) if the supply is of incorporated goods—each of the original goods incorporated in the incorporated goods and listed as described in subparagraph (c)(ii); or
- (iii) if the supply is of technology relating to original goods—the technology.

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

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

(2) An Australian Community member commits an offence if:

- (a) the member provides defence services in relation to goods or in relation to technology relating to goods; and
- (b) the defence services are provided in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the defence services are provided in relation to technology relating to original goods; and
- (c) at the time of the provision of the defence services, the following is listed in Part 2 of the Defense Trade Cooperation Munitions List:
  - (i) if the defence services are provided in relation to original goods or in relation to technology relating to original goods—the original goods;
  - (ii) if the defence services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods; and
- (d) at the time of the provision of the defence services, there is neither a licence or other authorisation granted by the Government of the United States of America, nor a notice under subsection (4), in force in relation to the Australian Community member and in relation to:
  - (i) if the defence service are provided in relation to original goods—the original goods; or
  - (ii) if the defence services are provided in relation to incorporated goods—each of the original goods



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- incorporated in the incorporated goods and listed as described in subparagraph (c)(ii); or
- (iii) if the defence services are provided in relation to technology relating to original goods—the technology.

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

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

*Control of US Defence Articles after authorisation*

- (3) An Australian Community member commits an offence if:
- (a) the member has goods, or technology relating to goods, in the member's possession, custody or control; and
  - (b) the goods in the member's possession, custody or control are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the technology in the member's possession, custody or control is technology relating to original goods; and
  - (c) the following is listed in Part 2 of the Defense Trade Cooperation Munitions List:
    - (i) if the goods in the member's possession, custody or control are original goods or the technology in the member's possession, custody or control is technology relating to original goods—the original goods;
    - (ii) if the goods in the member's possession, custody or control are incorporated goods—any of the original goods incorporated in the incorporated goods; and
  - (d) a notice under subsection (4) is in force in relation to the Australian Community member and in relation to:
    - (i) if the goods in the member's possession, custody or control are original goods—the original goods; or
    - (ii) if the goods in the member's possession, custody or control are incorporated goods—any of the original goods incorporated in the incorporated goods; or

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- (iii) if the technology in the member's possession, custody or control is technology relating to original goods—the technology; and
- (e) the Australian Community member contravenes a condition specified in the notice.

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

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

*Notices*

- (4) The Minister may give an Australian Community member a notice in relation to:
  - (a) specified goods; or
  - (b) specified technology relating to specified goods.

The notice may specify one or more conditions that apply in relation to the Australian Community member and the goods referred to in paragraph (a) or the technology referred to in paragraph (b).

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

*Geographical jurisdiction*

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

*Notice not a legislative instrument*

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

## **Division 4—Ministerial directions**

### **33 Ministerial directions—avoiding prejudice to the security, defence or international relations of Australia**

- (1) The Minister may, by writing, direct all Australian Community members not to:
  - (a) supply to a specified member of the United States Community goods listed in the Defence and Strategic Goods List, or technology relating to such goods, that are neither an Article 3(1) US Defence Article nor an Article 3(3) US Defence Article; and
  - (b) provide to a specified member of the United States Community defence services in relation to goods listed in the Defence and Strategic Goods List, or in relation to technology relating to such goods, that are neither an Article 3(1) US Defence Article nor an Article 3(3) US Defence Article.
- (2) The Minister may give a direction under subsection (1) only if the Minister is satisfied that it is necessary to do so in order to avoid prejudice to the security, defence or international relations of Australia.

#### *Revocation*

- (3) The Minister may, by writing, revoke a direction under subsection (1).

#### *Notice to approval holders*

- (4) The Minister must give each person who holds an approval under section 27 notice of the following:
  - (a) a direction under subsection (1);
  - (b) a revocation under subsection (3).

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

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*Publication*

- (5) The Minister must publish the following on the Department's website:
- (a) a direction under subsection (1);
  - (b) a revocation under subsection (3).

*Offence*

- (6) An Australian Community member commits an offence if:
- (a) the member supplies goods or technology relating to goods or provides defence services in relation to goods or in relation to technology relating to goods; and
  - (b) the supply, or the provision of the defence services, contravenes a direction that is in force under subsection (1); and
  - (c) the member knows of the contravention; and
  - (d) there is no notice in force under subsection (7) in relation to the member and the supply or the provision of the defence services (as the case may be).

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

*Notice approving supply or provision of defence services*

- (7) The Minister may, by notice given to an Australian Community member, approve one or more supplies, or approve the provision of one or more defence services, specified in the notice.

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

*Geographical jurisdiction*

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

*Non-legislative instruments*

- (9) The following are not legislative instruments:
- (a) a direction under subsection (1);
  - (b) a notice under subsection (7).

**34 Ministerial directions—suspension or cancellation of approvals**

*Suspension of approvals*

- (1) If under Division 2 the Minister suspends an approval given to a person under section 27, the Minister may give the person a notice directing the person to:
- (a) take specified action; or
  - (b) refrain from taking specified action;
- in relation to either or both of the following:
- (c) Article 3(1) US Defence Articles or Article 3(3) US Defence Articles in the person's possession, custody or control at the time the suspension takes effect;
  - (d) technology relating to original goods, being technology in the person's possession, custody or control at the time the suspension takes effect.

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

- (2) A notice given to a person under subsection (1) comes into force at the time the person receives the notice.
- (3) A notice given to a person under subsection (1) ceases to be in force once the suspension ceases to have effect.

*Cancellation of approvals*

- (4) If under Division 2 the Minister cancels an approval given to a person under section 27, the Minister may give the person a notice directing the person to:
- (a) take specified action; or

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- (b) refrain from taking specified action;  
in relation to either or both of the following:
- (c) Article 3(1) US Defence Articles or Article 3(3) US Defence Articles in the person's possession, custody or control at the time the cancellation takes effect;
- (d) technology relating to original goods, being technology in the person's possession, custody or control at the time the cancellation takes effect.

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

- (5) A notice given to a person under subsection (4) comes into force at the time the person receives the notice.
- (6) The Minister may, by writing, revoke a notice given to a person under subsection (4).
- (7) 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*

- (8) A person commits an offence if:
  - (a) a notice given to the person under subsection (1) or (4) is in force; and
  - (b) the person fails to comply with the notice.

Penalty: 12,500 penalty units.

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

*Notice not a legislative instrument*

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

## Division 5—Other matters

### 35 Transition to the Defense Trade Cooperation Treaty

- (1) This section applies if:
- (a) a person who is an Australian Community member received (at any time before or after the person became an Australian Community member) goods (the *transition goods*), or technology (the *transition technology*) relating to goods, from a member of the United States Community; and
  - (b) the member of the United States Community provided the goods or technology under a licence or other authorisation granted by the Government of the United States of America; and
  - (c) the person applies to the Minister for a notice under subsection (2).

Note: Section 66 sets out application requirements.

#### *Approving transition to Treaty*

- (2) If a person makes an application under subsection (1) in accordance with section 66 and the Minister is satisfied that the requirements prescribed by the regulations for the purposes of this subsection are satisfied in relation to the person, the Minister may give the person a notice specifying one or more of the following:
- (a) the transition goods are taken to be an Article 3(1) US Defence Article within the meaning of subsection 5(1);
  - (b) the transition goods are taken to be an Article 3(3) US Defence Article within the meaning of subsection 5(4);
  - (c) the transition technology is taken to be technology relating to an Article 3(1) US Defence Article within the meaning of subsection 5(1);
  - (d) the transition technology is taken to be technology relating to an Article 3(3) US Defence Article within the meaning of subsection 5(4).

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Note 1: Goods incorporating transition goods are also an Article 3(1) US Defence Article or an Article 3(3) US Defence Article: see subsections 5(2) and (5).

Note 2: Section 67 deals with giving notices under this Act.

- (3) A notice given to a person under subsection (2) comes into force at the time the person receives the notice.
- (4) A notice under subsection (2) has effect according to its terms.

*Refusing to approve transition to Treaty*

- (5) If the Minister refuses to give the person a notice under subsection (2), 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.

*Notice not a legislative instrument*

- (6) A notice under subsection (2) is not a legislative instrument.

**36 Defense Trade Cooperation Munitions List**

- (1) The Minister must make a document to be known as the Defense Trade Cooperation Munitions List.
- (2) The document must contain 2 Parts.
- (3) Part 1 is to contain a list of either or both of the following:
  - (a) goods listed in the Defence and Strategic Goods List;
  - (b) goods listed in the United States Munitions List referred to in Article 1(1)(n) of the Defense Trade Cooperation Treaty.
- (4) Part 2 is to contain a list of goods that are exempt from the scope of the Defense Trade Cooperation Treaty.
- (5) The document made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the document.



## **Part 4—Monitoring powers**

### **Division 1—Preliminary**

#### **37 Simplified outline of this Part**

If a person holds an approval under section 27, an authorised officer may enter certain premises at any reasonable time of day for the purpose of finding out whether the person has complied with Part 3 or 6 or a condition of the approval.

The authorised officer must give the person at least 24 hours' notice of the officer's intention to enter the premises.

An authorised officer who enters premises may exercise monitoring powers. The authorised officer may be assisted by other persons if that assistance is necessary and reasonable.

#### **38 No limit on section 71**

This Part does not limit section 71 (forfeiture).

## **Division 2—Appointment of authorised officers and issue of identity cards**

### **39 Appointment of authorised officers**

- (1) The Secretary may, in writing, appoint any of the following persons as an authorised officer for the purposes of this Part:
  - (a) a member of the Australian Defence Force who holds the rank of warrant officer or a higher rank;
  - (b) an APS employee who holds an APS 6 position, or an equivalent or higher position, in the Department.
- (2) The Secretary must not appoint a person as an authorised officer unless the Secretary is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an authorised officer.
- (3) An authorised officer must, in performing functions or exercising powers as an authorised officer, comply with any directions of the Secretary.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **40 Identity cards**

- (1) The Secretary must issue an identity card to an authorised officer.

#### *Form of identity card*

- (2) The identity card must:
  - (a) satisfy the requirements prescribed by the regulations; and
  - (c) contain a recent photograph of the authorised officer.

#### *Offence*

- (3) A person commits an offence if:

- (a) the person has been issued with an identity card; and
- (b) the person ceases to be an authorised officer; and
- (c) the person does not, within 7 days of so ceasing, return the identity card to the Secretary.

Penalty: 5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

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

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

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

*Authorised officer must carry card*

- (6) An authorised officer must carry his or her identity card at all times when performing functions or exercising powers as an authorised officer.

## **Division 3—Powers of authorised officers**

### **41 Authorised officer may enter premises**

- (1) If a person holds an approval under section 27, then, for the purpose of finding out whether the person has complied with Part 3 or 6 or a condition of the approval, an authorised officer may:
  - (a) enter the following premises at any reasonable time of day:
    - (i) any premises the person specified in the application for approval as premises at which Article 3(1) US Defence Articles or Article 3(3) US Defence Articles may be kept;
    - (ii) any premises the person subsequently informs the Minister in writing are premises at which Article 3(1) US Defence Articles or Article 3(3) US Defence Articles are being, or may be, kept;
    - (iii) any premises in Australia used, wholly or partly, by the person for the purposes of business operations of the person, except premises used as a place of residence; and
  - (b) exercise the monitoring powers set out in section 42.
- (2) However, an authorised officer must not enter premises under subsection (1) unless the officer has given the holder of the approval at least 24 hours' notice of the officer's intention to do so.

### **42 Monitoring powers of authorised officers**

- (1) The following are the *monitoring powers* that an authorised officer may exercise in relation to premises under section 41:
  - (a) the power to search the premises and any thing on the premises;
  - (b) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (c) the power to make any still or moving image or any recording of the premises or any thing on the premises;

- (d) the power to inspect any document on the premises;
- (e) the power to make copies of any such document;
- (f) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers set out in this section in relation to the premises;
- (g) the powers set out in subsections (2), (3) and (5).

*Powers relating to electronic equipment*

- (2) The monitoring powers include the power to operate electronic equipment on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to finding out whether the holder of the approval concerned has complied with Part 3 or 6 or a condition of the approval.
- (3) The monitoring powers include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
  - (a) the power to operate electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the information to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises or another person who apparently represents the occupier;and remove the disk, tape or other storage device from the premises.

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- (4) An authorised officer may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

*Securing things*

- (5) The monitoring powers include the power to secure a thing for a period not exceeding 24 hours if:
- (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an authorised officer believes on reasonable grounds that:
    - (i) the thing affords evidence of the commission of an offence against Part 3 or 6; and
    - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (iii) the circumstances are serious and urgent.

Note: The *Crimes Act 1914* contains provisions allowing the issue of warrants to seize things.

**43 Authorised officer may require person to answer questions or produce documents**

*Requirement to answer questions*

- (1) If:
- (a) an authorised officer enters premises under section 41; and
  - (b) the authorised officer believes on reasonable grounds that a person present at the premises is capable of answering a question relating to whether the holder of the approval concerned has complied with Part 3 or 6 or a condition of the approval;
- the authorised officer may require the person to answer the question put by the authorised officer.

*Requirement to produce documents*

- (2) If:
- (a) an authorised officer enters premises under section 41; and
  - (b) the authorised officer believes on reasonable grounds that a person present at the premises is capable of producing a document relating to whether the holder of the approval concerned has complied with Part 3 or 6 or a condition of the approval;
- the authorised officer may require the person to produce the document requested by the authorised officer.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1) or (2); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: Imprisonment for 6 months.

## **44 Self-incrimination**

- (1) A person is not excused from answering a question or producing a document under section 43 on the ground that the answer to the question 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 answer given or the document produced; and
  - (b) answering the question or producing the document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or producing the document;
- are not admissible in evidence against the individual in criminal proceedings other than:

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- (d) proceedings for an offence against subsection 43(3); or
- (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part.



## **Division 4—Obligations of authorised officers**

### **45 Announcement before entry**

Before entering premises under section 41, an authorised officer must:

- (a) announce that he or she is authorised to enter the premises;  
and
- (b) show his or her identity card to the occupier of the premises,  
or to another person who apparently represents the occupier,  
if the occupier or other person is present at the premises.

### **46 Occupier to be informed of rights and responsibilities**

If:

- (a) one or more authorised officers enter premises under  
section 41; and
  - (b) the occupier of the premises, or another person who  
apparently represents the occupier, is present at the premises;
- one of those officers must, as soon as practicable, inform the  
occupier or other person of the rights and responsibilities of the  
occupier or other person under Division 5.

## **Division 5—Occupier's rights and responsibilities**

### **47 Occupier entitled to observe search**

- (1) If an authorised officer enters premises under section 41 and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the occupier or other person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the occupier or other person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

### **48 Occupier to provide authorised officer with facilities and assistance**

- (1) The occupier of premises entered under section 41, or another person who apparently represents the occupier, must provide:
  - (a) an authorised officer exercising monitoring powers; and
  - (b) any person assisting the authorised officer;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## Division 6—Other matters

### 49 Tampering etc. with things secured

A person commits an offence if:

- (a) a thing has been secured under subsection 42(5); and
- (b) the person tampers or interferes with, or destroys, the thing.

Penalty: Imprisonment for 6 months.

### 50 Persons assisting authorised officers

*Authorised officers may be assisted by other persons*

- (1) An authorised officer may, in entering premises under section 41 and in exercising monitoring powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised officer.

*Powers of a person assisting the authorised officer*

- (2) A person assisting the authorised officer may:
  - (a) enter the premises; and
  - (b) exercise monitoring powers in relation to the premises, but only in accordance with a direction given to the person by the authorised officer.
- (3) A power exercised by a person assisting the authorised officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised officer.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

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### 51 Compensation for damage to electronic equipment

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:

**damage**, in relation to data, includes damage by erasure of data or addition of other data.

## **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.

- (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);

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- (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 or DSGL services the persons provide under the permits.

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

Persons who make certain other supplies of DSGL goods or DSGL technology, or who provide certain DSGL services, must also keep records of those activities.

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 activities that the person does 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.



*Records for other activities*

- (3A) If a person makes any supply covered by subsection (3B) or (3C), the person must keep records of the supply, unless:
- (a) the supply is made under a permit given to the person under section 11; or
  - (b) the circumstances prescribed by the regulations for the purposes of this paragraph apply.
- (3B) This subsection covers a constitutional supply of DSGL technology, in circumstances where:
- (a) the supply is from a place in Australia and is to:
    - (i) a place outside Australia; or
    - (ii) a foreign person; or
  - (b) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the person providing the access is in Australia and the person to whom access is provided is either:
    - (i) outside Australia; or
    - (ii) a foreign person.
- (3C) This subsection covers a constitutional supply of DSGL goods or DSGL technology, in circumstances where:
- (a) any of the following applies:
    - (i) the supply occurs wholly at a place outside Australia;
    - (ii) the supply is from a place outside Australia and is to a place outside Australia;
    - (iii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the person providing the access is outside Australia and the person to whom access is provided is outside Australia; and
  - (b) the person making the supply obtained the DSGL goods or DSGL technology as a direct or indirect result of the export or supply of the DSGL goods or DSGL technology:
    - (i) from a place in Australia to a place outside Australia; or

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- (ii) if the earlier export or supply was the provision of access to DSGL technology—in circumstances where, at the time of the provision of access, the person providing the access was in Australia and the person to whom the access was provided was outside Australia; and
  - (c) either of the following (whether or not obtained) was required in relation to the export or supply mentioned in paragraph (b):
    - (i) permission (however described) under regulations made under the *Customs Act 1901*;
    - (ii) a permit given under section 11 of this Act.
- (3D) If an Australian person provides any constitutional DSGL services to a foreign person at or from a place outside Australia, that are received at a place outside Australia, the Australian person must keep records of the provision of the DSGL services, unless:
- (a) the DSGL services are provided under a permit given to the Australian person under section 11; or
  - (b) the circumstances prescribed by the regulations for the purposes of this paragraph apply.

*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.

*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.

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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).

*Definition*

- (9) 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.

## **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).

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### *Offence*

- (4) A person commits an offence if:
- (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.

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- (2) However, in the case of an individual:
- (a) the record; and
  - (b) producing the record; and
  - (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 an activity 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;
  - (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;

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

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### *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.

### *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.

## 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 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 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;
- 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

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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** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**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.

*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;

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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**

- (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 section 11, 12 or 14, subsection 14A(8), section 14B or 15A, subsection 16(8), Part 3 or section 64, 68 or 72.

*Delegation of functions or powers under section 11, 12 or 14*

- (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

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- (c) an APS employee who holds, or is acting in, an Executive Level 1 or 2, or equivalent, position 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.
- (2C) The Minister may, by writing, delegate all or any of the Minister's functions or powers under section 14 to:
  - (a) the Secretary; or
  - (b) an SES employee, or acting SES employee, in the Department.

### *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
  - (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).

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*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:

<b>Decisions of delegates</b>		
<b>Item</b>	<b>Column 1 Decision</b>	<b>Column 2 Thing</b>
1A	A decision under section 14A to refuse to give a person an approval for the publication of the DSSL technology covered by the person's application for an approval	The publication of that DSSL technology
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	The activity covered by the arrangement
3	A decision under section 27 to refuse to approve a person as a member of the Australian Community	The person's holding of such an approval

- (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.
- (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.

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

### 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:
  - (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

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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.
- (10) The Group must give its final report to the Minister, and the Research Minister, before the second anniversary of 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.

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- (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
  - (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*.

**Section 74B**

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**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) The persons undertaking the review must give the Minister a written report of the review.
- (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.

**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.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

## Endnotes

### Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

#### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Trade Controls Act 2012	153, 2012	13 Nov 2012	s 3–9, 26–57, 58(3)–(8) and 59–74: 6 June 2013 (s 2(1) items 2, 9, 11) s 10, 13–15, 18, 58(1) and (2): 2 Apr 2016 (s 2(1) items 3, 5, 7, 10) s 11, 12, 16, 17 and 19–25: 16 May 2015 (s 2(1) items 4, 6, 8) Remainder: 13 Nov 2012 (s 2(1) items 1, 12)	
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (item 120) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2015 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Defence Trade Controls Amendment Act 2015	31, 2015	2 Apr 2015	Sch 1 (items 1–15, 52– 77): 2 Apr 2015 (s 2(1) items 2, 8) Sch 1 (items 16–22, 30– 44): 2 Apr 2016 (s 2(1) items 3, 5) Sch 1 (items 23–29, 45– 49, 50–51): 16 May 2015 (s 2(1) items 4, 6, 7)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 169): 5 Mar 2016 (s 2(1) item 2)	—
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 60–62, 100–108): 1 July 2018 (s 2(1) item 2)	Sch 1 (items 100– 108)
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023	74, 2023	20 Sept 2023	Sch 1 (items 35, 36): 20 Mar 2024 (s 2(1) item 2)	Sch 1 (item 36)

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s 2 .....	am No 31, 2015
s 3 .....	rs No 31, 2015
s 4 .....	am No 31, 2015; No 25, 2018
s 5A .....	am No 31, 2015
<b>Part 2</b>	
<b>Division 1A</b>	
Division 1A .....	ad No 31, 2015
s 9A .....	ad No 31, 2015
<b>Division 1</b>	
s 10 .....	am No 31, 2015; No 25, 2018
s 11 .....	am No 31, 2015
s 12 .....	am No 31, 2015
s 14 .....	am No 31, 2015
s 14A .....	rs No 31, 2015
s 14B.....	ad No 31, 2015
s 14C.....	ad No 31, 2015
<b>Division 2</b>	
s 15 .....	am No 31, 2015; No 25, 2018
s 15A .....	ad No 31, 2015
s 15B.....	ad No 31, 2015
s 16 .....	am No 31, 2015
s 17 .....	am No 31, 2015
<b>Division 3</b>	
s 20 .....	am No 31, 2015
<b>Division 4</b>	
Division 4 .....	ad No 31, 2015
s 25A .....	ad No 31, 2015

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 3</b>	
<b>Division 1</b>	
Division 1 .....	rs No 31, 2015
s 26 .....	rs No 31, 2015
<b>Division 5</b>	
s 36 .....	am No 126, 2015
<b>Part 4</b>	
<b>Division 1</b>	
s 37 .....	rs No 31, 2015
<b>Division 2</b>	
s 40 .....	am No 31, 2015; No 74, 2023
<b>Division 3</b>	
s 43 .....	am No 31, 2015
<b>Division 5</b>	
s 48 .....	am No 31, 2015
<b>Division 6</b>	
s 49 .....	am No 31, 2015
<b>Part 5</b>	
s 51A .....	ad No 31, 2015
<b>Part 6</b>	
s 57A .....	ad No 31, 2015
<b>Part 7</b>	
s 62A .....	ad No 31, 2015
s 63 .....	am No 31, 2015
s 64 .....	am No 31, 2015
<b>Part 8</b>	
s 65A .....	ad No 31, 2015
s 68 .....	am No 31, 2015
s 69 .....	am No 62, 2014
s 72 .....	am No 31, 2015
s 73 .....	am No 31, 2015

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 74 .....	am No 31, 2015
s 74B.....	ad No 31, 2015