



## CAN I SUPPLY DSGL TECHNOLOGY TO A NON-EXEMPT FOREIGN PERSON WITHIN AUSTRALIA?

### UNDERSTANDING THE DSGL (DEFENCE AND STRATEGIC GOODS LIST)

The **DSGL** specifies the goods, software, and technologies that are regulated under Australia's export control legislation. Commonly referred to as 'controlled' items, they generally require a permit before they can be exported, brokered or published unless a specific exemption applies. The **DSGL** has two categories:

- ➔ **Part 1 (Munitions List)** – covering items that are specially designed or modified for military use.
- ➔ **Part 2 (Dual-Use List)** – covering items that are generally used for commercial purposes but that could be used in a chemical, biological or nuclear weapons program.

### WHO IS A NON-EXEMPT FOREIGN PERSON?

- ➔ Is from a country not on the **Foreign Country List** (FCL), and
- ➔ Does not hold a covered security clearance from recognised countries (Australia, UK, US, Canada, or New Zealand).

**i** Note that these exceptions do not apply to the supply of Australian Military Sales Program items or Excluded DSGL goods/technology.

### NEW AMENDMENTS TO THE DEFENCE TRADE CONTROLS ACT 2012

The *Defence Trade Controls Act 2012* regulates the supply, brokering and publication of DSGL goods, software and technology. The *Defence Trade Controls Amendment Act 2024* (DTC Amendment Act), establishes three new offences:

- Section 10A:** Supply of certain DSGL technology to a non-exempt foreign person within Australia
- Section 10B:** Supply of certain DSGL goods and technology, previously exported or supplied from Australia, from one place outside of Australia to another.
- Section 10C:** Provision of DSGL services related to Part 1 of the DSGL by an Australian person outside of Australia to a foreign person outside of Australia.

### EXCEPTIONS TO THE OFFENCE

- ➔ **Fundamental Research:** Publicly disclosed research with no restrictions.
- ➔ **Build-to-Print:** The 10A offence does not apply if the supply of the DSGL technology is necessary for manufacturing components, not the entire DSGL good.
- ➔ **Security Clearances:** Provides an exception to all 3 new offences for the supply of DSGL goods, technology, or provision of DSGL services to a person holding a covered security clearance.
- ➔ **Government Employees:** Provides an exception to all 3 new offences for the supply of DSGL services, made by or to certain Australian Government employees in the course of their duties.

**i** Note that exceptions often have important additional requirements or qualifications, so please refer to legislation.

### SCENARIO EXAMPLES

**Permit Required:** A PhD supervisor giving a foreign student in Australia, who is from a non-FCL country, DSGL controlled blueprints for a hypersonic vehicle.

**No Permit Required:** A supervisor sharing published blueprints that are available in the public domain with a foreign student in Australia (regardless of whether or not they are from a FCL country).

### PENALTIES

Supplying DSGL technology to a non-exempt foreign person in Australia without a permit, if no exceptions apply, can result in:

- ➔ Up to 10 years imprisonment.
- ➔ Fines up to 2500 penalty units.

**i** Note that the new controls are subject to a 6-month grace period and will not be enforced until March 2025.

### Contact Us

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