



DEFENCE EXPORT CONTROLS

DEEP DIVES

Export Control Changes: Compiled Deep Dive Materials

November – December 2024

Last updated: 13 December 2024

Table of Contents

#	Topic	Page
1	Overview	(slide 3)
2	AUKUS Licence-free Environment	(slide 8)
3	Section 10A – Onshore Supplies	(slide 15)
4	Section 10B – Offshore Resupplies	(slide 25)
5	Section 10C – Defence Services	(slide 36)
6	Fundamental Research	(slide 45)
7	Nationality	(slide 53)
8	Reporting	(slide 57)
9	Compliance	(slide 60)
10	Support	(slide 64)

VISIT

[Outreach and training | Business & Industry | Defence](#)

for

Packs and recordings from individual deep dives on these topics

Information and registration links for upcoming outreach events

Other guidance, training and learning resources



1. Overview

 [TABLE OF CONTENTS](#)



We are Defence Export Controls

Defence Export Controls (DEC) is the **Commonwealth regulator** for the movement of defence-related goods and technology. This involves:

- **Assessing applications** to transfer
- **Issuing permits** to legally operate
- **Monitoring reporting obligations** are met
- **Performing compliance audits** (incl. end-user verification)

Permits may be required when seeking to **export, supply, publish** or **broker** military and/or dual-use goods and technology on the Defence Strategic Goods List (DSGL), as well as to publish or provide services related to military goods and technology on the DSGL.

Current Export Controls Framework

DEC administers Australia’s defence export controls framework through a combination of:

Federal Legislation

Covering ‘Controlled’ items listed on the DSGL



[Customs \(Prohibited Exports\) Regulations 1958](#)



[Defence Trade Controls Act 2012](#)



[Weapons of Mass Destruction \(Prevention of Proliferation\) Act 1995](#)



[Customs Act 1901 Military End-Use provisions \(section 112BA\)](#)

Covering ‘Uncontrolled’ items not listed on the DSGL

Legislative Instruments



[Defence and Strategic Goods List 2024](#)



[Australian Military Sales Program items 2024](#)



[Excluded DSGL Goods and Technologies List 2024](#)



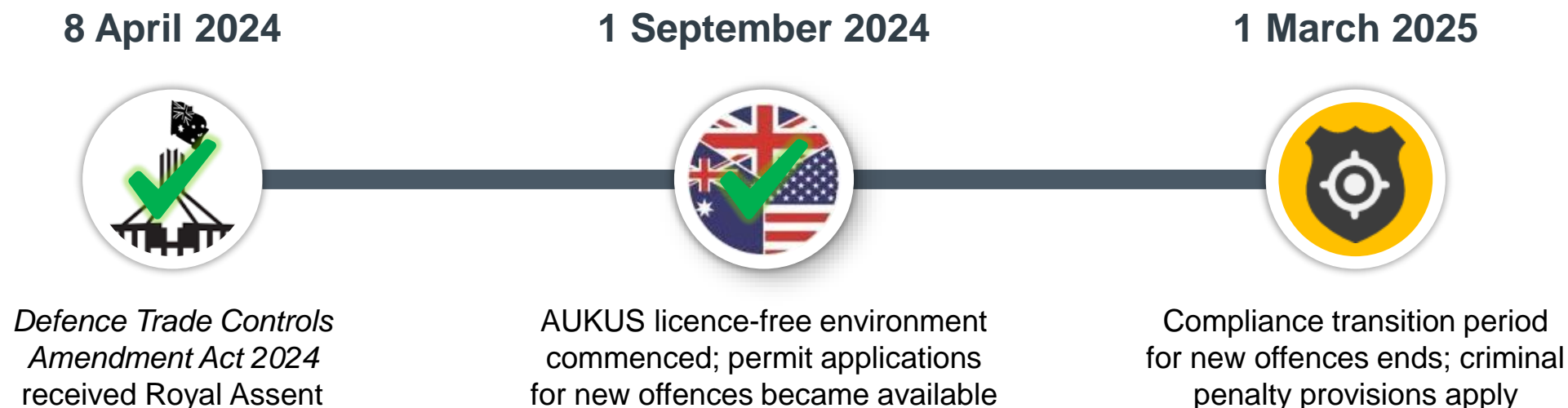
[Foreign Country List 2024](#)



Changes Have Occurred

The **Defence Trade Controls Amendment Act 2024** (and supporting *Defence Trade Legislation Amendment Regulations 2024*) commenced on 1 September 2024, changing Australia’s defence export control laws. Two key changes were:

- 1 **Licence-free environment** between Australia / US / UK, where permits may not be required.
- 2 **3 new offences** where permits may be required (subject to 6-month transition period).



Expanded Export Controls Provisions


Australian defence export control offences (effective as of 1 September 2024):

	Offence Provision	Description of Control	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
'Controlled' provisions (covering items on the DSGL)			Applies to DSGL ...			
EXISTING	Customs Regs (13E)	Physical/tangible export of DSGL goods cross-border	✓	✓	✓	✓
EXISTING	DTC Act (s10)	Intangible supply of DSGL technology cross-border	✓	✓	✓	✓
NEW	DTC Act (s10A)	Supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
NEW	DTC Act (s10B)	Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
NEW	DTC Act (s10C)	Provision of certain DSGL services outside Australia	✓	✗	✗	✗
EXISTING	DTC Act (s14A)	Publication of certain DSGL technology	✓	✗	✗	✗
EXISTING	DTC Act (15)	Brokering of certain DSGL goods and technology	✓	* ✓	* ✓	* ✓
'Uncontrolled' provisions (covering items not on the DSGL)			Applies to DSGL ...			
EXISTING	WMD Act	Export/supply of uncontrolled goods, and provision of services that may be used in/assist a weapons on mass destruction (WMD) program	N/A			
EXISTING	Customs Act (112BA)	Export of uncontrolled goods that may be for military end-use (MEU)	N/A			

* Brokering permits only required for DSGL Part 2 when goods or technology may be for WMD or MEU purposes



2. AUKUS Licence-free Environment

 [TABLE OF CONTENTS](#)

Overview of the Licence-free Environment

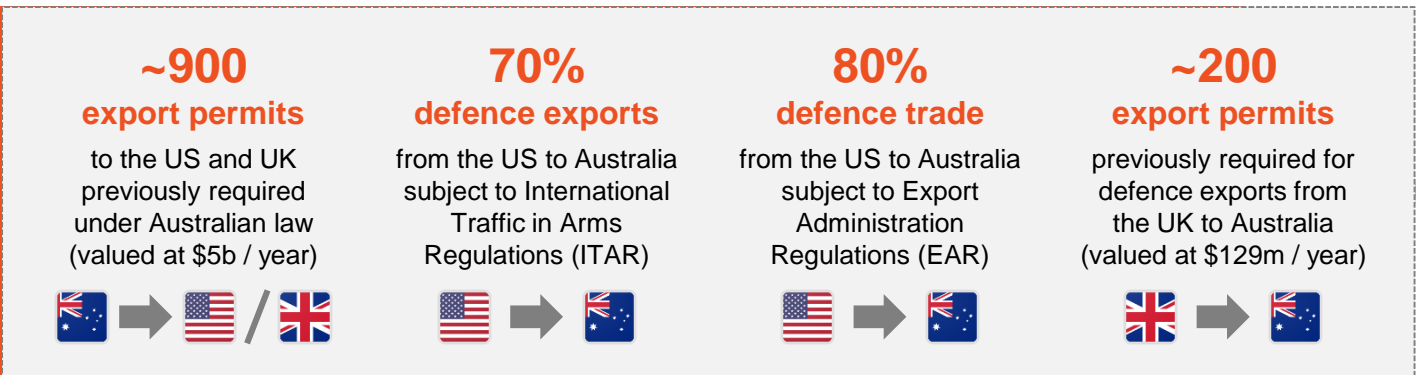
Under the licence-free environment many military and dual-use goods, technologies and services can be **transferred without permits** between AUKUS partners.

- **In July 2023**, Australian, US and UK leaders **committed to streamlining defence trade** among AUKUS partners through the creation of a trilateral export licence-free environment.
- **On 1 September 2024**, this **licence-free environment was enabled** by legislative changes implemented by Australia, the US and UK.
- **As a result**, a ‘national exemption’ for the US and UK is now available for the **Customs (PE) Regulations** (Section 13E) and **DTC Act** (Sections 10, 10A, 10B, 10C, 15).



Impact on defence trade for Australia

The licence-free environment is now available to use for:



Using the Licence-free Environment

The following **criteria must all be met** to make use of the licence-free environment.

<p>Registration and Certification</p>	<p>The exporter or supplier has a Defence Export Controls Registration Number (DCRN) and has enrolled via the My Australian Defence Exports (MADE) portal as an AUKUS Authorised User. <i>Note: if activity is subject to ITAR, the exporter or supplier must also be a US-certified ‘Authorized User’.*</i></p>
<p>End-user</p>	<p>The export, supply or provision is to an Australian / UK / US citizen, permanent resident, corporation, government, or government authority. <i>Note: if involving ITAR, the export, supply or provision must be to another US-certified ‘Authorized User’.*</i></p>
<p>Location</p>	<p>The export, supply is to, or the services are received at, a place in Australia / US / UK.</p>
<p>Excluded Lists</p>	<p>The DSGL goods or technology are not on an excluded list (for Australia this is the Excluded DSGL Goods & Technologies List or Australian Military Sales Program items).</p>
<p>Pre-notification</p>	<p>DEC has been notified prior to the export or supply occurring via the MADE portal. <i>Note: this is only required for exports or supplies out of Australia (e.g. Customs Regs 13E / DTC Act s10 activities).</i></p>

* further information on US-certified ‘Authorized Users’ and their ITAR exemption access is available on the DEC website ([Access Types factsheet](#))



Access Types

There are two types of access to the AUKUS licence-free environment:

1. **‘Partial’ Access:** exemptions to Australia’s export control laws
2. **‘Full’ Access:** exemptions to Australia’s export control laws + additional exemptions to US law under ITAR §126.7

Further Information

Use the MADE Portal to apply for access to the licence-free environment, including the additional option to access the ITAR exemption.

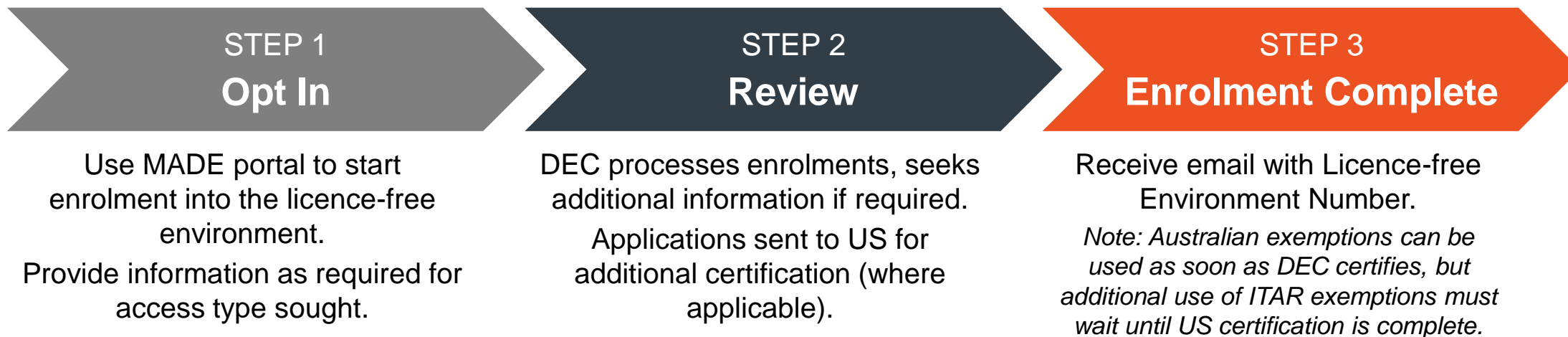
Persons/entities who become certified by the US as **Australian Authorized Users** will already be registered as **AUKUS Authorized Users** and be able to access Australian exemptions.

‘Partial’ Access (non-ITAR)	VS.	‘Full’ Access (ITAR)
<p style="text-align: center;">AUKUS Authorized User [certified by Australia]</p>		<p style="text-align: center;">Australian Authorized User [certified by US]</p>
<p>What does it provide? Australian legislative exemptions only</p>		<p>What does it provide? US ITAR §126.7 exemptions; (Australian exemptions carry over)</p>
<p>Who can transfers involve? Any Australian / US / UK person and/or entity at a place in Australia / US / UK</p>		<p>Who can transfers involve? For ITAR, only other US certified ‘Authorized Users’ in an AUKUS country</p>
<p>What are your obligations? Pre-notification to DEC when undertaking certain exempted activities + record-keeping</p>		<p>What are your obligations? Record-keeping in-line with US ITAR T&Cs; only pre-notify DEC if exporting from Australia</p>



Enrolment Process

Licence-free environment **enrolments follow a basic process**, regardless of access type.















Once You Are Enrolled ...

- **Permits no longer required for activities that satisfy the licence-free environment requirements**
- **Use of your licence-free environment number as your Export Declaration Number (EDN) in the Integrated Cargo System (ICS)**
- **Multi-shipment use of your licence-free environment number**



Example Scenarios

Your circumstances will influence if – and what level of – access to the AUKUS licence-free environment will benefit you.

Options \ Scenarios	Transferring goods or technology not on the DSGL	Export/supply to countries other than US / UK	Export/supply to US / UK <u>not involving</u> ITAR controlled items	Export/supply to US / UK <u>involving</u> ITAR controlled items	Receiving ITAR controlled items from US / UK
Apply for DEC Permit Only	N/A	 Consider if exemptions apply	 Consider if exemptions apply	 Need relevant ITAR approval from US	 Need relevant ITAR approval from US
Use Licence-free Environment (Australian exemption)	N/A	 Trade not occurring between AUKUS countries	 Consider other eligibility criteria	 Does not cover ITAR	 Does not cover ITAR
Use Licence-free Environment (ITAR exemption)	N/A	 Trade not occurring between AUKUS countries	 Not required if ITAR not involved	 Required to <u>transfer</u> ITAR licence-free	 Required to <u>receive</u> ITAR licence-free

Note on   Persons/entities who are certified to access the **ITAR exemption** will have already been registered with DEC to access the **Australian exemption**



AUKUS Exemption – Pre-Notification / Records

Pre-notification must be given (and records kept) when using the AUKUS exemption (i.e. licence-free environment) for Customs Regs 13E exports or DTC Act s10 supplies.


Information you will need to provide / retain for ...	Pre-Notification (13E / s10 only)	Records (for all uses)
Description of DSGL goods, technology, or services provided	Provide in MADE	Keep Record
Name of person who received DSGL goods, technology, or services	Provide in MADE	Not Required
Country in which DSGL goods, technology, or services were received	Provide in MADE	Keep Record
Date(s) of activity / activities in question	Provide in MADE	Not Required
Unique identifier of permit	N/A	N/A

Note: additional obligations may arise depending on the type of export (e.g. ITAR controlled items).

Records must be retained for 5 years from the date of export/supply, or provision of services. Failure to retain or produce records is an offence under the *Defence Trade Controls Act 2012*.



3. Section 10A – Onshore Supplies

 [TABLE OF CONTENTS](#)

New Offence – Section 10A

Section 10A is one of three new offences in the *Defence Trade Controls Act 2012*.

Defence Trade Controls Act 2012 – New Offences	Applies to DSGL ...			
	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
10A: Supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
10B: Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
10C: Provision of certain DSGL services outside Australia	✓	✗	✗	✗



Note: permits are not required when using the **AUKUS** licence-free environment, including for these new offences



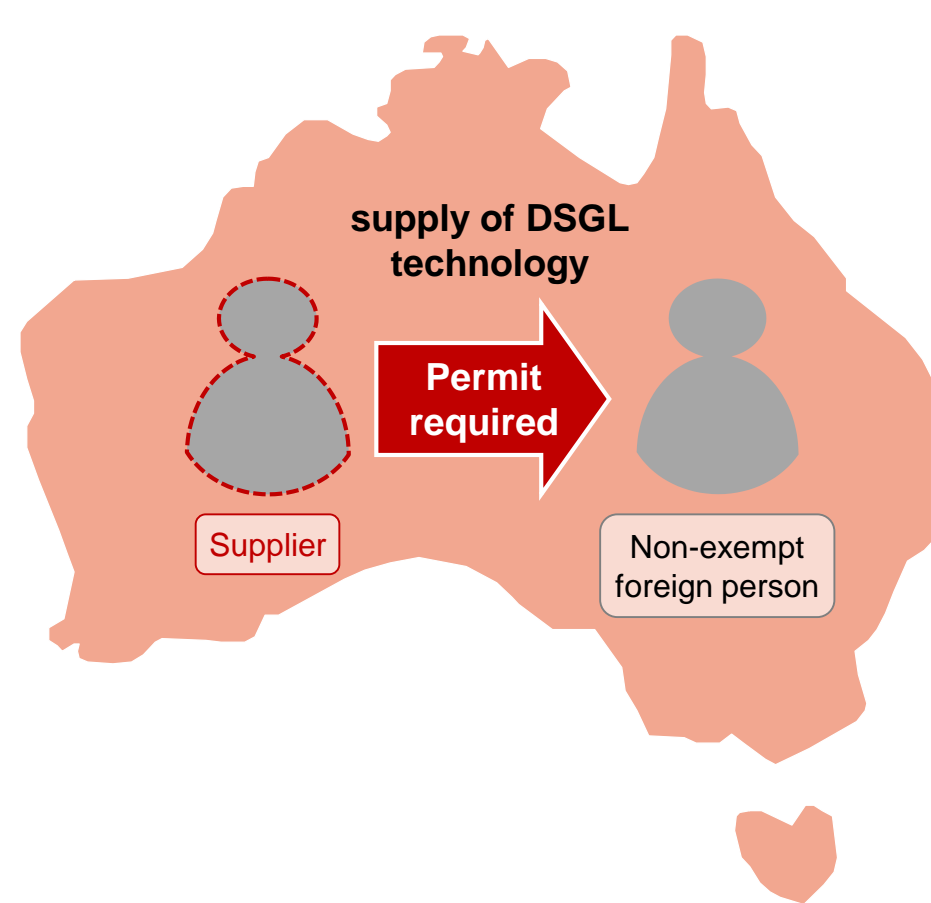
Section 10A Overview

Applies to DSGL ...	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
	YES	YES	YES	YES

It is an **offence under Section 10A** of the *Defence Trade Controls Act 2012* if:

1. **A person supplies** (incl. provision of access)
2. **DSGL technology** (not goods)
3. **to a ‘non-exempt’ foreign person**
4. **within Australia**

Without a permit from DEC




Note: Refer to the [Defence Trade Controls Act 2012](#) for the comprehensive legal criteria under Section 10A.



1. (What is a) Supply?

It is an **offence under Section 10A** of the *Defence Trade Controls Act 2012* if:

-  **1. A person supplies (incl. provision of access)**
- 2. DSGL technology (not goods)
- 3. to a ‘non-exempt’ foreign person
- 4. within Australia

Without a permit from DEC

Types of Section 10A supplies include ...



Formal exchanges



Sending emails

Info in physical documents




Access to secure folders



2. DSGL Technology

It is an **offence under Section 10A** of the *Defence Trade Controls Act 2012* if:

1. A person supplies (incl. provision of access)
-  2. **DSGL technology (not goods)**
3. to a 'non-exempt' foreign person
4. within Australia

Without a permit from DEC

DSGL technology refers to either 'technology' or 'software' as defined and listed in the DSGL.

EXCEPT for technology produced in the course of, or for the purposes of, **fundamental research.**

"Technology" means specific information necessary for the development, production or use of a product. This information takes the form of 'technical data' or 'technical assistance'.


- Technical assistance: includes instruction, skills, training, working knowledge and consulting services and may involve the transfer of 'technical data'.
- Technical data: includes blueprints, plans, diagrams, models, formulae, algorithms, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

"Software" means a collection of one or more 'programs' or 'microprograms' fixed in any tangible medium of expression.



3. 'Non-exempt' Foreign Person

It is an **offence under Section 10A** of the *Defence Trade Controls Act 2012* if:

1. A person supplies (incl. provision of access)
2. DSGL technology (not goods)
-  3. **to a 'non-exempt' foreign person**
4. within Australia

Without a permit from DEC

For the purposes of Section 10A, exempt foreign persons are defined as:

- Citizens / permanent residents
- Body corporates
- Government or government authorities

from a country on the [Foreign Country List \(FCL\)](#).

Note: does not apply to DSGL technology on the ETL or AMSP

Argentina	Finland	Japan	Portugal
Austria	France	Latvia	South Korea
Belgium	Germany	Lithuania	Spain
Bulgaria	Greece	Luxembourg	Sweden
Canada	Hungary	Netherlands	Switzerland
Czech Republic	India	New Zealand	United Kingdom
Denmark	Ireland	Norway	United States
Estonia	Italy	Poland	



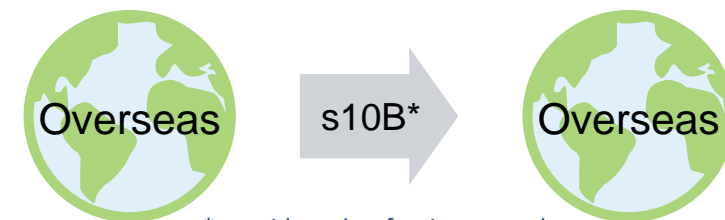
4. Within Australia

It is an **offence under Section 10A** of the *Defence Trade Controls Act 2012* if:

1. A person supplies (incl. provision of access)
2. DSGL technology (not goods)
3. to a 'non-exempt' foreign person
- ➔ **4. within Australia**

Without a permit from DEC

Controls on the supply of DSGL technology ...



* consider other foreign controls



Exceptions to Section 10A

No permit is required for Section 10A if any of the following exceptions apply:

Source	Exception	Description
5C(1C)	FCL person*	Supplies to citizens, permanent residents, body corporates, governments, and government authorities from a country on the Foreign Country List.
10A(4) + Reg 7	Defense Trade Cooperation Treaty	Supplies of Treaty articles under <i>US-Australia Defense Trade Cooperation Treaty</i> .
10A(6)	Australian government employees*	Supplies by or to certain Australian Government employees in the course of their duties.
10A(7)	Covered security clearance*	Supplies to NV1 or above security clearance holders (or holders of equivalent US / UK / Canada / New Zealand clearances).
10A(7A) + Reg 7A	Build-to-print	Supplies for component production of DSGL goods (limited to what is reasonably necessary for component manufacture, must not inform overall design or way of producing DSGL goods as a whole).
10A(8) + Reg 7B	Foreign Work Authorisation (SAMS)	Service provider holds a <i>Foreign Work Authorisation</i> under SAMS Legislation for relevant work or training (for more information visit: www.defence.gov.au/SAMS).

Note: Refer to the [Defence Trade Controls Act 2012](#) and [Defence Trade Controls Regulation 2013](#) for detailed requirements of all exceptions.



Examples – Section 10A

Section 10A can be relevant in various circumstances (including but not limited to):

Research Collaboration

An international research team based in Australia intends to collaborate on a commercial hypersonic vehicle project. Part 2 DSGL technology will be shared within the team, while the geometric (but not internal) designs are intended to be published.

How may Section 10A apply?

- For FCL persons, collaboration unrestricted (if technology not on ETL or AMSP)
- For non-FCL persons, no permit needed if Fundamental Research (i.e. intended for public + not subject to other restrictions)
- Permits required for non-FCL team members where Fundamental Research (or other exceptions) do not apply
- Note: s14 publishing permit (Part 1 only)

Presenting at a Conference

An Australian citizen wants to present information containing DSGL technology at a conference in Australia. The conference is restricted to invited attendees only (not open to the general public) – some of these attendees will be foreign persons.

How may Section 10A apply?

- Consider if the presented information falls under Fundamental Research
 - If yes, no restrictions
 - If no, can still present to FCL persons without a permit (if technology not on ETL / AMSP)
- Permit required for every non-FCL attendee (unless other exceptions apply)

Supply Chain Subsidiaries

Company A (based in Australia) is a subsidiary of Company B. Company A intends to supply DSGL technology (needed to produce a controlled component of a DSGL good) to foreign persons of Company B located in Australia.

How may Section 10A apply?

- If limited to the medium reasonably necessary technology, and does not inform overall design production, build-to-print exception applies and no permit required
- If Company A supplies only to FCL representatives from Company B, no permit required (if technology not on ETL / AMSP)
- Permit otherwise required (unless other exceptions apply)

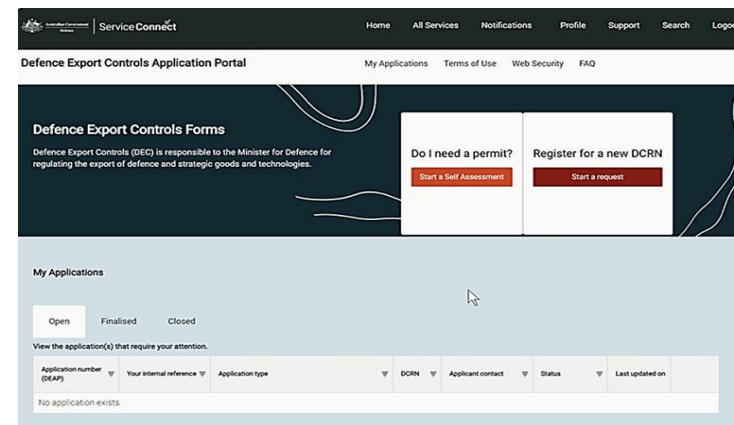


In Summary – Section 10A

Depending on your circumstances, you may now require a permit for the intangible supply of DSGT technology to foreign persons in Australia.

If you require a permit for a Section 10A activity, apply via the [My Australian Defence Exports \(MADE\)](#) portal.

Note: bulk permits are not available – one permit per individual recipient is required.




SECTION 10A Things to Remember ...

- **New offence introduced, bringing Australia in-line with US and UK**
- **Limited impact on trade and collaboration with people from FCL countries**
- **Expanded definition for Fundamental Research**
- **Consider other exceptions (build-to-print, covered security clearances, etc.)**
- **Maintain records – even when relying on an exception**



4. Section 10B – Offshore Resupplies

 [TABLE OF CONTENTS](#)

New Offence – Section 10B

Section 10B is one of three new offences in the *Defence Trade Controls Act 2012*.

Defence Trade Controls Act 2012 – New Offences	Applies to DSGL ...			
	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
10A: Supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
10B: Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
10C: Provision of certain DSGL services outside Australia	✓	✗	✗	✗



Note: permits are not required when using the **AUKUS** licence-free environment, including for these new offences



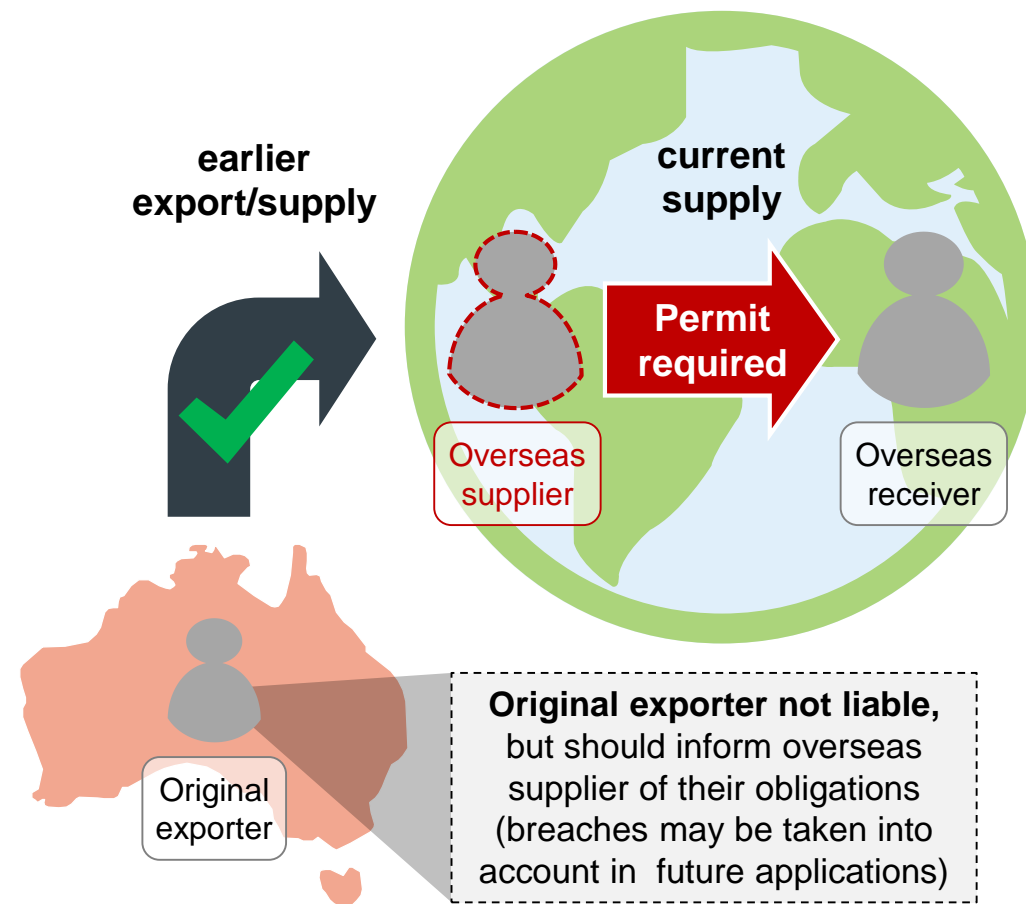
Section 10B Overview

Applies to DSGL ...	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
	YES	YES	YES	NO

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

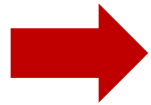
- 1. A person supplies to another person** (current supply)
- 2. from one place outside Australia, to another place outside Australia**
- 3. certain DSGL goods and technology** (excl. firearms)
- 4. previously exported / supplied out of Australia in a manner requiring a DEC permit** (earlier export/supply)

Without a permit from DEC



1. (What is) a Supply?

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:



1. **A person supplies to another person** (current supply)
2. from one place outside Australia, to another place outside Australia
3. certain DSGL goods and technology (excl. firearms)
4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

Supply includes:

(a) supply by way of sale, exchange, gift, lease, hire or hire-purchase;

AND


(b) in relation to DSGL technology – includes provision of access (e.g. sending emails, info in physical documents, access to secure folders)

Without a permit from DEC

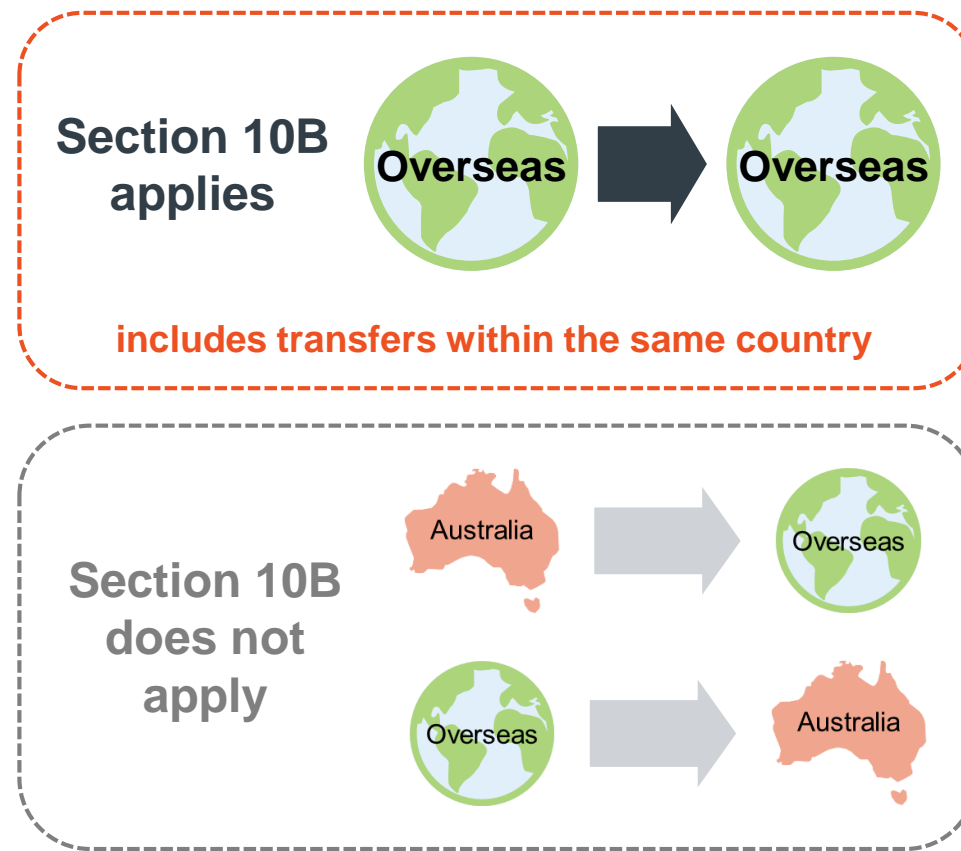


2. Outside Australia

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

1. A person supplies to another person (current supply)
-  2. **from one place outside Australia, to another place outside Australia**
3. certain DSGL goods and technology (excl. firearms)
4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

Without a permit from DEC



3. Certain DSGL Goods and Technology

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

1. A person supplies to another person (current supply)
2. from one place outside Australia, to another place outside Australia
-  3. **certain DSGL goods and technology** (excl. firearms)
4. previously exported / supplied out of Australia in a manner requiring a DEC permit (earlier export/supply)

Section 10B is limited in application:

DSGL Part 1 (Munitions List)
except firearms

DSGL Part 2 (Dual-Use List)
Sensitive and Very Sensitive lists only

Without a permit from DEC

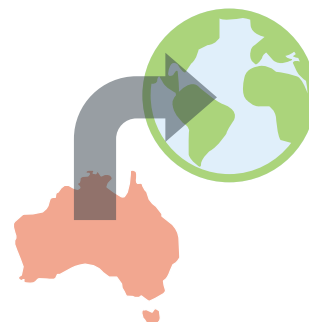


4. Previously Exported/Supplied from Australia

It is an **offence under Section 10B** of the *Defence Trade Controls Act 2012* if:

1. A person supplies to another person (current supply)
2. from one place outside Australia, to another place outside Australia
3. certain DSGL goods and technology (excl. firearms)
-  4. **previously exported / supplied out of Australia in a manner requiring a DEC permit** (earlier export/supply)

Without a permit from DEC



Overseas supplier must have obtained the DSGL goods/tech as a direct or indirect result of the earlier export/supply from Australia

-- AND --



Earlier export/supply required a DEC permit (e.g. Customs Regs r13E; DTC Act s10) – regardless of whether one was actually obtained or not



Consider Elapsed Time

Section 10B only **applies for a limited period of time** – supplies made after a prescribed period of time from the date of the earlier export/supply do not require a permit.

DSGL Part 1 (Munitions List)



lapses after **1 YEAR**

DSGL Part 2 (Dual-Use List)

Very Sensitive List



lapses after **1 YEAR**

DSGL Part 2 (Dual-Use List)

Sensitive List



lapses after **6 MONTHS**



Exceptions to Section 10B

No permit is required for Section 10B if any of the following exceptions apply:

Source	Exception	Description
10B(5) + Reg 7	Defense Trade Control Treaty	Re-transfers of Treaty articles under <i>US-Australia Defense Trade Cooperation Treaty</i> .
10B(6)	Intracompany (Australian / FCL)	Re-transfers made within a company to Australian or FCL employees/officers in the course of their duties.
10B(7)	Australian government employees*	Re-transfers by or to certain Australian Government employees in the course of their duties.
10B(8)	Covered security clearance*	Re-transfers to NV1 or above security clearance holders (or holders of equivalent US / UK / Canada / New Zealand clearances).
10B(8A)	Original equipment manufacturer	Re-transfers where the earlier export/supply, current supply, or any intervening supply is to the Original Equipment Manufacturer (OEM).
10B(8B)	FCL involvement (Part 2 only)	Re-transfers within, to, or from an FCL country (except for DSGL Part 1).
10B(8C) + Reg 7C	Elapsed period	Re-transfers after certain amount of time since earlier export/supply: <ul style="list-style-type: none"> ▪ 12 months – DSGL Part 1 / Part 2 ‘Very Sensitive’. ▪ 6 months – for DSGL Part 2 ‘Sensitive’.
10B(8C)	Grandfathering	Re-transfers where permit for earlier export/supply granted before 1 September 2024.
10B(9) + Reg 7D	AUKUS partners	Re-transfers made from the US or UK.

Note: Refer to the [Defence Trade Controls Act 2012](#) and [Defence Trade Controls Regulation 2013](#) for detailed requirements of all exceptions.



Examples – Section 10B

Section 10B can be relevant in various circumstances (including but not limited to):

Supplies within Companies

Company A (located in a FCL Country) receives Part 1 DSGL technology from Australia.

Company A intends to make this technology accessible to its employees on a secure internal system.

Supplies to Other Companies

Company B (located in a non-FCL Country) receives Part 2 DSGL goods from Australia.

Company B intends to supply these DSGL goods to various partners around the world.

Grandfathering Provision

Company C has received multiple Part 1 DSGL goods/technology, supplied lawfully from Australia with permits issued prior to 1 September 2024.

Company C intends to on-sell these goods and technology.

How may Section 10B apply (assuming earlier export/supply required a permit)?

- If supply made from the US or UK, no permit required
- For FCL employees, no permit required
- For non-FCL employees, permit may be required to provide access to the technology (consider other exemptions)
- After 1 year, no permit required
- Only applies if the DSGL Part 2 goods are on Very Sensitive / Sensitive list
- If re-supply made to an FCL country, no permit required
- If re-supply made within the same non-FCL country or to another non-FCL country, a permit may be required
- Section 10B does not apply to any DSGL good/technology that were lawfully supplied from Australia under a permit issued before 1 September 2024
- This activity would otherwise be subject to Section 10B (consider whether other exceptions apply)

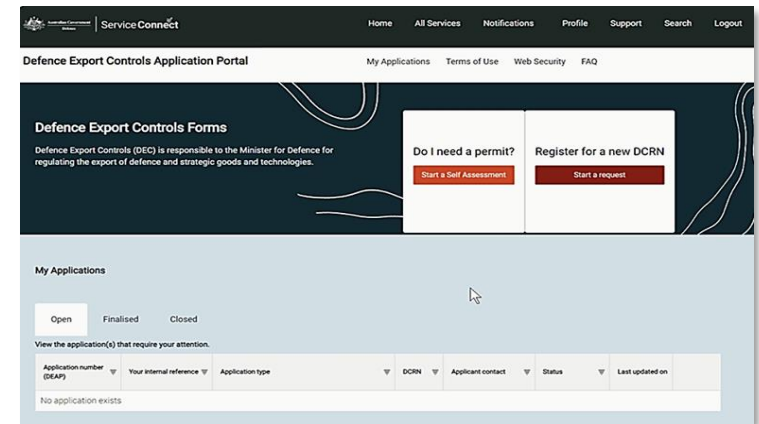
Note: Section 10B operates independently from other nations' export controls – always consider foreign laws which may also apply



In Summary – Section 10B

Depending on your circumstances, you may now require a permit for the offshore supply of certain DSGL goods or technology, which were earlier exported or supplied from Australia.

If you require a permit of a Section 10B activity, apply via the [My Australian Defence Exports \(MADE\)](#) portal.




SECTION 10B Things to Remember ...

- **New offence introduced, bringing Australia in-line with the US and UK**
- **Applies to DSGL Part 1 + Part 2 Very Sensitive / Sensitive only**
- **Supplies from US / UK exempt; FCL countries exempt for Part 2**
- **Original exporter should inform overseas recipient of obligations**
- **Lapses after at most 1 year since earlier export/supply**



5. Section 10C – Defence Services

 [TABLE OF CONTENTS](#)

New Offence – Section 10C

Section 10C is one of three new offences in the *Defence Trade Controls Act 2012*.

Defence Trade Controls Act 2012 – New Offences	Applies to DSGL ...			
	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
10A: Supply of DSGL technology to a foreign person in Australia	✓	✓	✓	✓
10B: Re-export or re-supply of certain DSGL goods/technology outside Australia	✓	✓	✓	✗
10C: Provision of certain DSGL services outside Australia	✓	✗	✗	✗



Note: permits are not required when using the **AUKUS** licence-free environment, including for these new offences



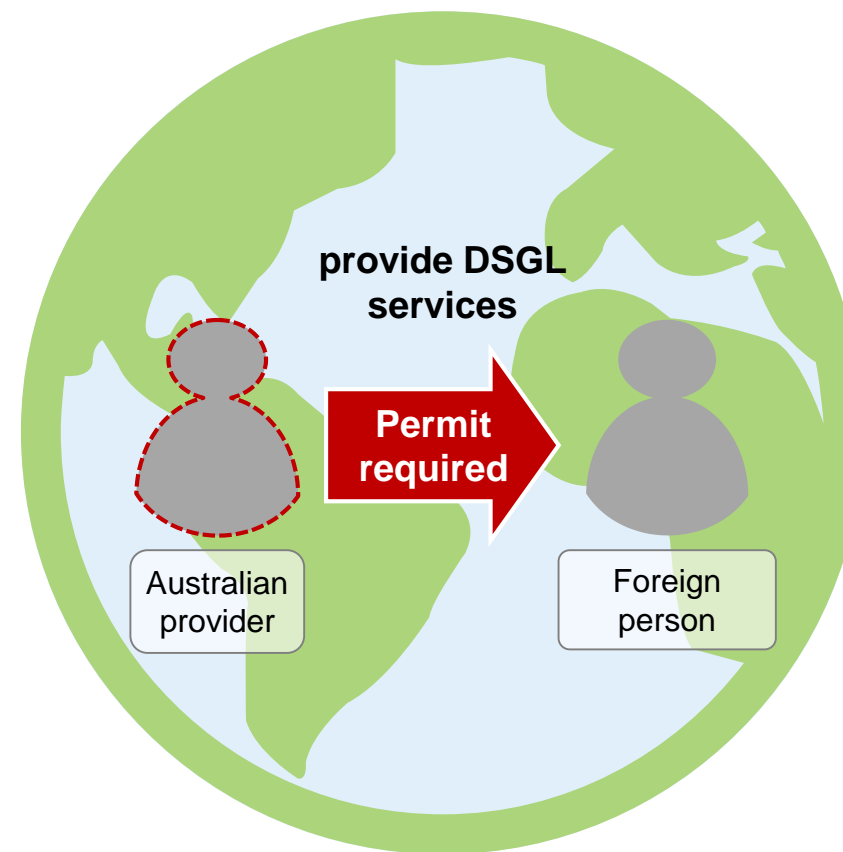
Section 10C Overview

Applies to DSGL ...	Part 1	Part 2 (Very Sensitive)	Part 2 (Sensitive)	Part 2 (Other)
	YES	NO	NO	NO

It is an **offence under Section 10C** of the *Defence Trade Controls Act 2012* if:

1. An Australian person located outside Australia
2. provides certain DSGL services
3. to a foreign person located outside Australia

Without a permit from DEC



1. Australian Person Overseas

It is an **offence under Section 10C** of the *Defence Trade Controls Act 2012* if:

- ➔ **1. An Australian person located outside Australia**
- 2. provides certain DSGL services
- 3. to a foreign person located outside Australia

Without a permit from DEC

Service provider is an Australia person



Australian person includes:


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

Note: Refer to the [Defence Trade Controls Act 2012](#) for the comprehensive legal criteria under Section 10C.



2. Part 1 DSGL Services

It is an **offence under Section 10C** of the *Defence Trade Controls Act 2012* if:

1. An Australian person located outside Australia
-  2. **provides certain DSGL services**
3. to a foreign person located outside Australia

Without a permit from DEC

DSGL services means the giving of assistance (incl. training) for goods or technology on DSGL Part 1 only.

‘Assistance’ or ‘training’ can be for the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing, or use of DSGL Part 1 goods or technology.



3. Foreign Person Overseas

It is an **offence under Section 10C** of the *Defence Trade Controls Act 2012* if:

1. An Australian person located outside Australia
2. provides certain DSGL services
3. **to a foreign person located outside Australia**



Without a permit from DEC

Overseas foreign person
(noting Five Eyes exemption)



foreign person is an individual, corporate entity, government, or government authority that is not an Australian person

Note: For Section 10C, this does not include certain services provided to Five Eyes foreign persons located in a Five Eyes country.



Exceptions to Section 10C

No permit is required for Section 10C if any of the following exceptions apply:

Source	Exception	Description
5C(2A)	Five Eyes Recipients*	Services provided to Canada/New Zealand/UK/US citizens, permanent residents, corporations, or governments/government authorities, received in any of those countries.
10C(2A) + 10C(2B)	Foreign Work Authorisation (SAMS)	Service provider holds a <i>Foreign Work Authorisation</i> under SAMS Legislation for relevant work or training (for more information visit: www.defence.gov.au/SAMS).
10C(3) + Reg 7	Defense Trade Cooperation Treaty	Services provided in relation to Treaty articles under <i>US-Australia Defense Trade Cooperation Treaty</i> .
10C(4)	Intracompany (FCL)	Services provided within a company to FCL employees/officers in the course of their duties.
10C(5)	Maintenance services	Services involving (the performance of / training related to) limited forms of maintenance [see 10C(5)(c)/(d)], provided in support of a lawful supply of DSGL goods/tech.
10C(6)	Australian government employees*	Provision by or to certain Australian Government employees in the course of their duties.
10C(7)	Covered security clearance*	Provision to NV1 or above security clearance holders (or holders of equivalent US / UK / Canada / New Zealand clearances).
10C(7A)	Grandfathering	Services provided in connection with a lawful export/supply that occurred (and under a contract/agreement entered into) before 1 September 2024.

Note: Refer to the [Defence Trade Controls Act 2012](#) and [Defence Trade Controls Regulation 2013](#) for detailed requirements of all exceptions.



Examples – Section 10C

Section 10C can be relevant in various circumstances (including but not limited to):

Requested Services

A foreign government has received vehicles from a third party supplier that are Part 1 DSGL goods.

Foreign government officials approach an Australian person and request their professional services to modify and enhance operational capabilities of those vehicles.

The Australian person would provide the DSGL services in person to the officials at a location outside of Australia.

How may Section 10C apply?

- If the foreign government officials are from Canada/NZ/UK/US, and are receiving the services in any of those countries, no permit required (assuming the DSGL goods are not ETL/AMSP).
- Maintenance exception does not apply since services include upgrades which enhance the capability of the DSGL goods.

Company Services

An Australian company previously lawfully exported certain Part 1 DSGL goods overseas to their foreign customer.

That Australian company has now been contracted by their foreign customer to provide them with training regarding maintenance and use of those Part 1 DSGL goods.

The Australian company would provide these DSGL services at various sites outside of Australia.

How may Section 10C apply?

- Services related to maintenance only may be exempt
- Services related to use may be controlled, and require a permit
- Grandfathering may apply if the export of the DSGL goods occurred (and services contract entered into) before 1 September 2024

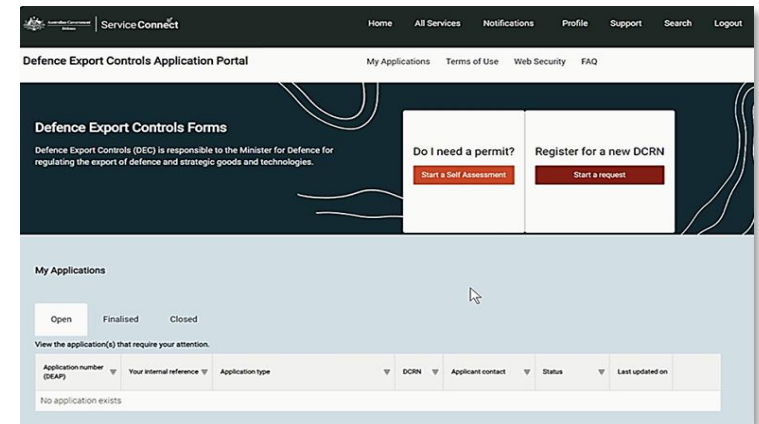
Remember: if the relevant person holds a valid SAMS Foreign Work Authorisation (FWA) for the same activity, a DEC permit is not required. For more information visit: www.defence.gov.au/SAMS



In Summary – Section 10C

Depending on your circumstances, you may now require a permit if – as an Australian person – you provide services while overseas related to Part 1 of the DSGL to a foreign person.

If you require a permit for a Section 10C activity, apply via the [My Australian Defence Exports \(MADE\)](#) portal.




SECTION 10C Things to Remember ...

- **New offence introduced, bringing Australia in-line with US and UK**
- **DSGL services must be provided by an Australian overseas**
- **Only covers certain services related to DSGL Part 1 goods or technology**
- **Five Eyes recipients from US/UK/Canada/NZ exempt (excl. ETL/AMSP items)**
- **Exemption if SAMS *Foreign Work Authorisation* held for same activity**



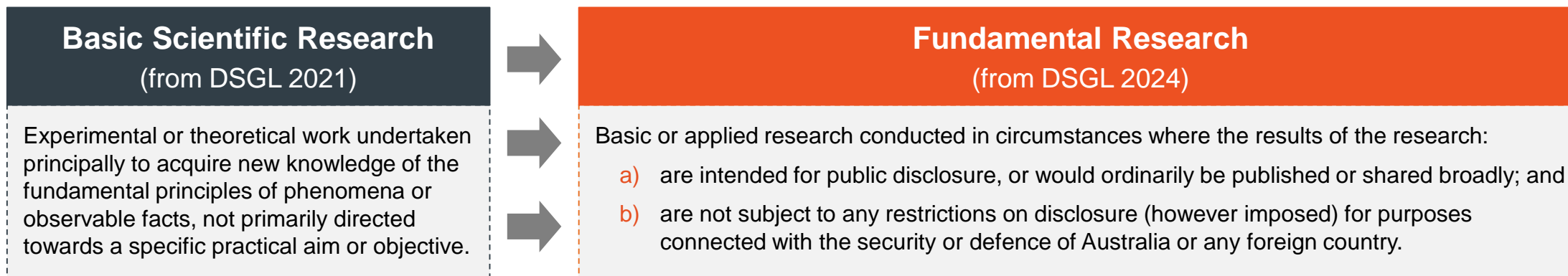
6. Fundamental Research

 [TABLE OF CONTENTS](#)

Fundamental Research – What has changed?

There is an exception for **Fundamental Research** within Australia’s export controls.

- Legislative changes on 1 September 2024 **expanded this exception** from ‘basic research’ only to ‘basic and applied research’ – this has **widened the net** for research activities to be considered exempt from controls.
- This new definition was arrived at **in collaboration** with the higher education and research sector.



Note: the meaning of ‘basic’ and ‘applied’ are taken from the [Organisation for Economic Co-operation and Development Frascati Manual 2015](#).

- » Basic research: experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view.
- » Applied research: original investigation undertaken in order to acquire new knowledge. Applied research is directed primarily towards a specific, practical aim or objective.



Fundamental Research – How does it work?

Fundamental Research **operates as a ‘de-control’**, meaning associated technologies are **not considered ‘DSGL technology’** for the purposes of all export control offences.

DSGL technology means specific information necessary for the development, production or use of a product. This information takes the form of ‘technical data’ or ‘technical assistance’.

- Technical assistance: includes instruction, skills, training, working knowledge and consulting services and may involve the transfer of ‘technical data’.
- Technical data: includes blueprints, plans, diagrams, models, formulae, algorithms, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

Controls do not apply to technology produced in the course of, or for the purposes of, Fundamental Research

- Relevant to **all export control offences** relating to ‘DSGL technology’ in the DTC Act and Customs (PE) Regs.
- **Other de-controls** in the DSGL relevant to definition of ‘DSGL technology’ include (but are not limited to):
 - Information in the public domain
 - The minimum necessary information for patent applications (*except for Category 0 – Nuclear*)
 - The minimum necessary information for the installation, operation, maintenance (checking) and repair, of those items which are not controlled or whose export has been authorised (*except for Category 0 – Nuclear*)



Fundamental Research – When can it apply?

Consider three main questions to determine if Fundamental Research applies:

Fundamental Research Definition (from DSGL 2024)	<p><u>Basic or applied research</u> conducted in circumstances where the results of the research:</p> <ul style="list-style-type: none"> 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.
--	--



Basic or applied research
 (per OECD definition)



Meant for public
 (intended to or ordinarily would be published)



Not restricted
 (for security or defence reasons)



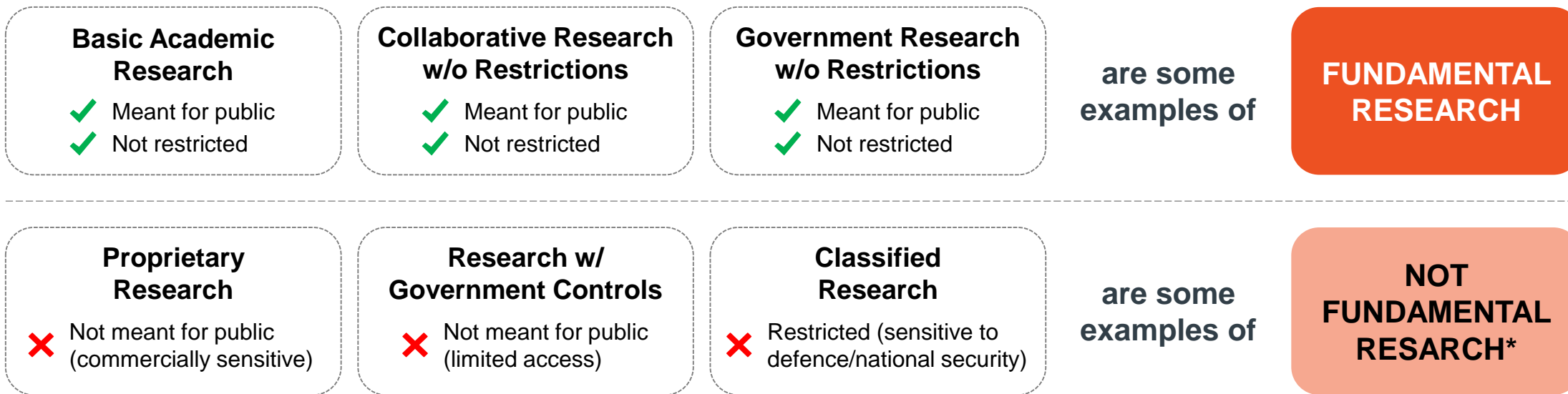
Fundamental Research

Anything else does not qualify as Fundamental Research (i.e. might be DSGL technology, and therefore subject to controls)



General Guidance on Research Types

The nature of the research often indicates if it is **meant for the public AND not restricted in any way** – both must be met to satisfy Fundamental Research.



* Permits may still not be necessary – consider if other de-controls or legislative exceptions apply



Examples – Fundamental Research

The **circumstances and context unique to any research** will ultimately determine if it satisfies the Fundamental Research definition.

Fundamental Research

Open-Access Research on Cybersecurity

A university research team studies general cybersecurity principles and techniques that could enhance both civilian and military systems. The research is published in open-access journals and presented at international conferences without any restrictions.

Qualifies as Fundamental Research

The research is intended to be published and shared broadly, and there are no restrictions on dissemination.

Unclassified Basic Research on Materials

A university conducts unclassified basic research on new composite materials that could potentially be used in military applications, such as lightweight armour. The research is funded by a government agency, but there are no restrictions on publication or dissemination of the results. The results are intended to be published.

Qualifies as Fundamental Research

The research is unclassified and there are no restrictions on publication or dissemination.

Not Fundamental Controlled Research

Proprietary Research on Military Technology

A university lab collaborates with a defence contractor on developing a new radar system for military aircraft. The contract includes clauses that restrict the publication of research results and require the contractor's approval before any dissemination.

Does Not Qualify as Fundamental Research

The research has publication restrictions imposed by the defence contractor sponsor, which disqualifies it.

Classified Research on Defence Systems

A university researcher is involved in a classified project to develop advanced targeting systems for military drones. The project is funded by Defence and is subject to security classification, restricting publication and dissemination of the research results.

Does Not Qualify as Fundamental Research

The research is classified and subject to restrictions on publication and dissemination, which disqualifies it.

Government-Funded Research w/ Access Controls

A university receives funding from Defence to study advanced propulsion systems for military vehicles. The funding agreement includes specific restrictions on who can access the research results and how they can be disseminated.

Does Not Qualify as Fundamental Research:

This research is subject to access and dissemination controls imposed by Defence, which disqualifies it.

Research with Export-Controlled Technology

A university researcher works on a project involving the development of encryption algorithms specifically designed for military communications. The technology is listed on the U.S. Munitions List (USML) and subject to ITAR controls.

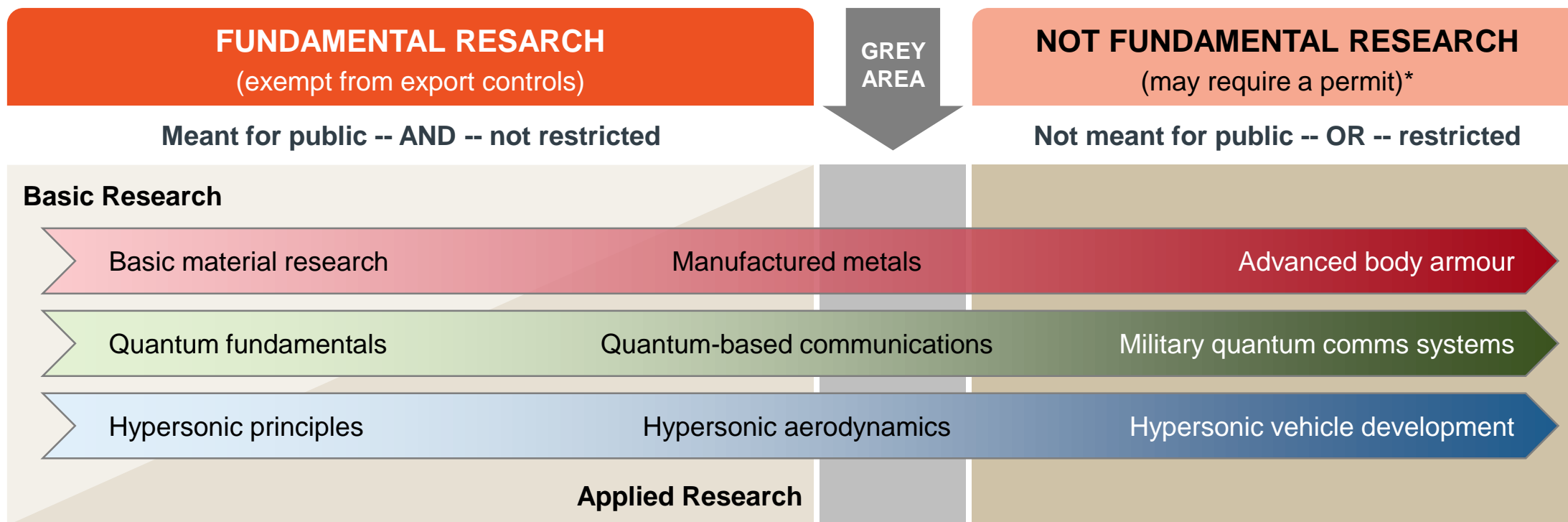
Does Not Qualify as Fundamental Research

The research is subject to disclosure restrictions for purposes connected with security/defence of a foreign country (via ITAR controls), which disqualifies it.



Evolution of Research

Consider the **threshold for Fundamental Research** as research develops over stages.



If you are unsure: Speak with your compliance team | Use self-help tools | Reach out to DEC

* Additional factors to consider include: other further de-controls; the scope of any export control offences; legislative exceptions



Other Considerations


Additional areas of interest around Fundamental Research involve:

<p>Record Keeping</p>	<p><i>Record keeping is not required for activities involving technology that does not constitute 'DSGL technology' due to falling within the Fundamental Research definition.</i></p>
<p>Timelines for Publishing</p>	<p><i>There is no limit to the length of time regarding an intent to publish when considered under Fundamental Research. However, restrictions on publishing – even if for a limited time period – would disqualify the technology from Fundamental Research until the restrictions have lapsed.</i></p>
<p>Supply via Various Materials</p>	<p><i>e.g. Conference posters, slide shows, presentations – to determine if the materials you intend to share actually contain 'DSGL technology', consider if the technology has been produced in the course of, or for the purposes of, Fundamental Research.</i></p>

**Permits may be required for activities that involve DSGL technology.
Consider other exceptions that may apply to your circumstances.**



7. Nationality

 [TABLE OF CONTENTS](#)

Defining ‘Nationality’

An **Australian person** and **foreign person** have specific definitions under the *Defence Trade Controls Act 2012*.

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.

foreign person means any individual, corporate entity, government, or authority that is not an Australian person

What does this mean?

Any Australian citizen or permanent resident is considered an ‘Australian person’, regardless of other citizenships held or if they live in another country.

Any individual, entity or organisation that does not meet the definition of an ‘Australian person’ is considered a ‘foreign person’.

Citizenship, permanent residency, or country of incorporation is also used to determine what country a foreign person is considered to be from (e.g. AUKUS, Five Eyes, FCL)..



IMPORTANT

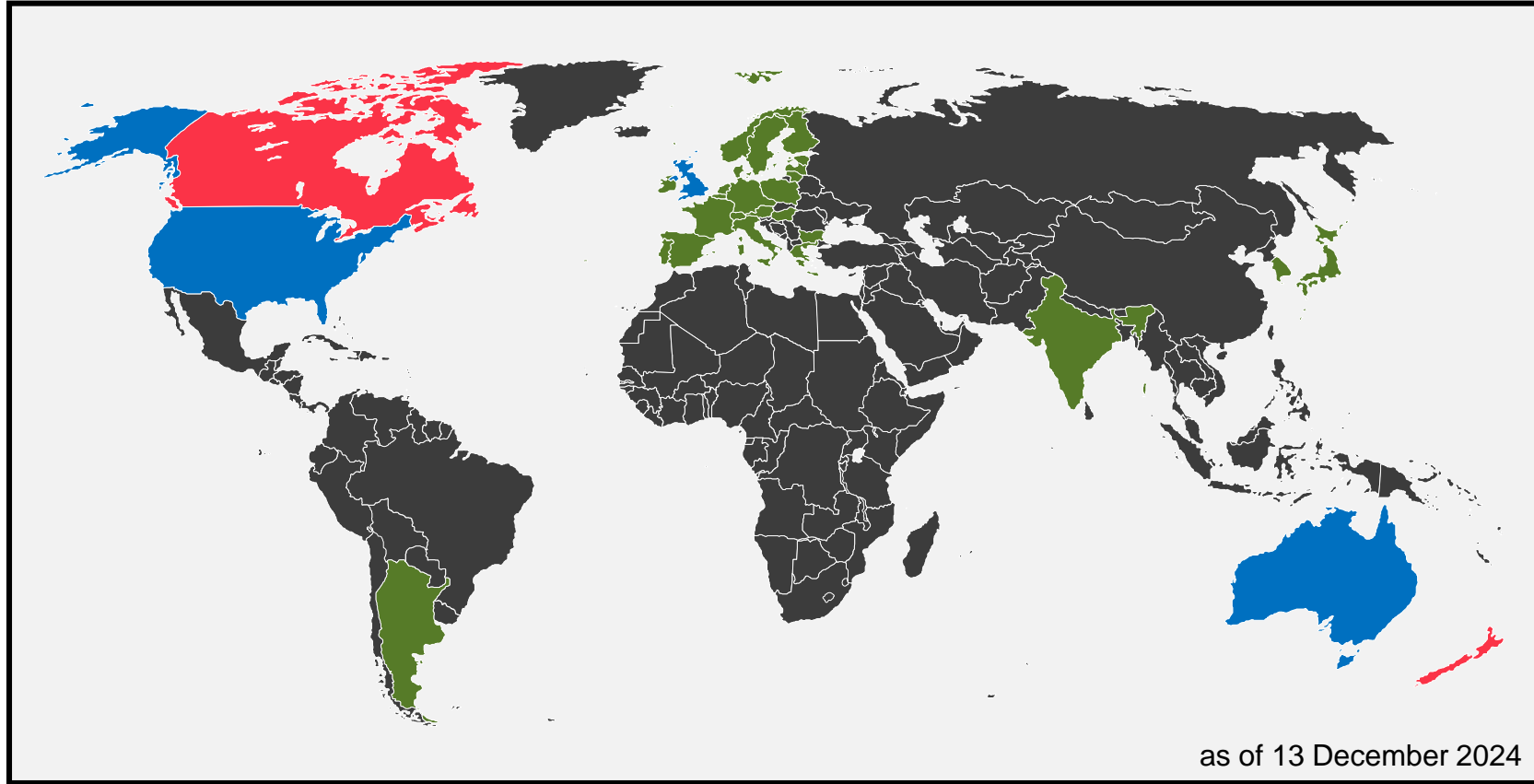
These definitions are specific to Australia’s export control laws. Other restrictions / sanctions / definitions may be relevant depending on individual circumstances under other regulatory frameworks.

* Meaning provided within the *Australian Citizenship Act 2007*



Nations with Potential Exemptions

Various exemptions and exceptions are available based on the **AUKUS** and **Five Eyes** partnerships, and the **Foreign Country List**.



FIVE EYES	AUKUS	Australia
		United Kingdom
		United States
		Canada
		New Zealand
FOREIGN COUNTRY LIST (FCL)		Argentina
		Austria
		Belgium
		Bulgaria
		Czech Republic
		Denmark
		Estonia
		Finland
		France
		Germany
		Greece
		Hungary
		India
		Ireland
		Italy
		Japan
		Latvia
		Lithuania
		Luxembourg
		Netherlands
	Norway	
	Poland	
	Portugal	
	South Korea	
	Spain	
	Sweden	
	Switzerland	



Foreign Country List

The Foreign Country List (FCL) is legislative instrument made by the Minister for Defence - it serves as the **basis for certain exemptions** under Australia's export control laws.

[Foreign Country List \[as of 14 August 2024\]](#): Austria, Belgium, Bulgaria, Canada, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, UK, US (and recently added: Argentina, Estonia, India, Latvia, Lithuania, Republic of Korea)

FCL-Based Exemptions

Refer to legislation for full details

- **Section 10:** intracompany supplies to FCL employees in the course of their duties.
- **Section 10A:** recipients who are citizens / permanent residents / corporate entities / governments / government authorities from an FCL country.
- **Section 10B:** supplies occurring wholly within, from, or to an FCL country (only Part 2 DSGL).
- **Section 10B:** intracompany supplies to FCL employees in the course of their duties.
- **Section 10C:** intracompany services to FCL employees in the course of their duties.


The Minister for Defence determines which countries to include on the FCL based on if:

- They are participants of all four multilateral export control regimes;* or
- It is in the interests of Australia's national security, foreign relations or economic well-being.

*	
Australia Group	Nuclear Suppliers Group
Missile Technology Control Regime	Wassenaar Arrangement



8. Reporting

 [TABLE OF CONTENTS](#)

AUKUS Exemption – Pre-Notification / Records

Pre-notification must be given (and records kept) when using the AUKUS exemption (i.e. licence-free environment) for Customs Regs 13E exports or DTC Act s10 supplies.

Information you will need to provide / retain for ...	Pre-Notification (13E / s10 only)	Records (for all uses)
Description of DSGL goods, technology, or services provided	Provide in MADE	Keep Record
Name of person who received DSGL goods, technology, or services	Provide in MADE	Not Required
Country in which DSGL goods, technology, or services were received	Provide in MADE	Keep Record
Date(s) of activity / activities in question	Provide in MADE	Not Required
Unique identifier of permit	N/A	N/A

Note: additional obligations may arise depending on the type of export (e.g. ITAR controlled items).

Records must be retained for 5 years from the date of export/supply, or provision of services. Failure to retain or produce records is an offence under the *Defence Trade Controls Act 2012*.



New Offences – Records

Records must be kept for the new Section 10A / 10B / 10C activities, whether they were conducted **under a permit** – OR – when using an exception.


Information you will need to retain in records for ...	Permit Activities	Excepted Activities*
Description of DSGL goods, technology, or services provided	Keep Record	Keep Record
Name of person who received DSGL goods, technology, or services	Keep Record	Not Required
Country in which DSGL goods, technology, or services were received	Not Required	Keep Record
Date(s) of activity / activities in question	Keep Record	Not Required
Unique identifier of permit	Keep Record	N/A

Note: the record-keeping obligations above relate only to activities covered by Section 11 permits (e.g. permits for Section 10 / 10A / 10B/ 10C). For brokering permits, records would also be required for the place in which the DSGL goods/tech/services were supplied from.

Records must be retained for 5 years from the date of export/supply, or provision of services. Failure to retain or produce records is an offence under the *Defence Trade Controls Act 2012*.



9. Compliance

 [TABLE OF CONTENTS](#)

Remaining Compliant During Change

Maintain compliance through self-audits and voluntary disclosures for the:

- **AUKUS licence-free environment**
(since 1 September 2024)
- **Three new offences: Section 10A / 10B / 10C**
(from 1 March 2025)

Compliance practices for pre-existing controls remain unchanged.

Note: Section 10A / 10B / 10C offences are subject to a 6-month compliance transition period from the commencement of the *Defence Trade Controls Amendment Act* on 1 September 2024.

From 1 March 2025, the criminal penalty provisions for each new offence will take effect.

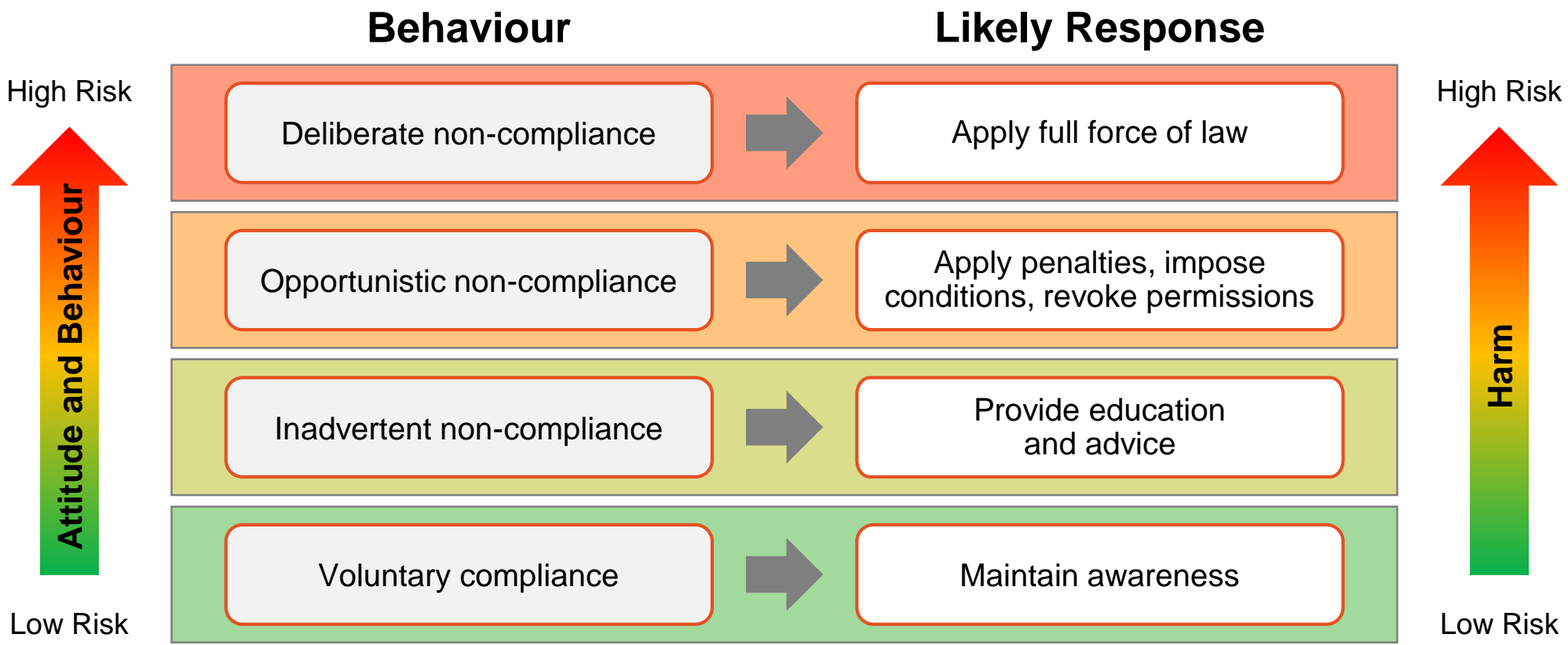
Reminder: Those prosecuted for offences under Australia's export control laws may face a **penalty of up to 10 years imprisonment, and/or a fine up to 2,500 penalty units.***

* one penalty unit (as of 7 November 2024) = \$330, for a **total maximum fine of \$825,000**



DEC's Compliance Approach

DEC takes a **graduated approach to compliance** using a proportionate response model.



Proportionality

The **Proportionate Response Model**:

- **Recognises** that most regulated entities are prepared to voluntarily comply with Australia’s export control laws
- **Enables** and empowers the regulated community to self-audit and expand their own due diligence checks
- **Verifies** compliance, including through audits, data analysis, and intelligence reporting
- **Escalates** suspected non-compliance to our enforcement agencies for further investigation

Factors taken into account when assessing suspected non-compliance

Risk of harm

Seriousness of the contravention


Apparent intent of the entity
(inadvertent, negligent, reckless or deliberate)

Compliance history

Frequency of the issue occurring



10. Support

 [TABLE OF CONTENTS](#)

Supporting Compliance into the Future

DEC is committed to **continuing outreach and education** in support of compliance.

We value your feedback!

- How have you found the DEC Deep Dive series content?
- What education materials or events would you like to see more of?
 - What areas and topics could use further clarity?

Please email dec.outreach@defence.gov.au if you have any comments, questions or feedback about DEC's outreach activities





Where to Get Help and Assistance?

1. **Contact your organisation's export controls office**
2. **Visit the Defence Export Controls website**
<https://www.defence.gov.au/business-industry/exporting>
3. **Use the MADE portal self-help tool and guidance materials**
4. **Email exportcontrols@defence.gov.au**
5. **Call 1800 333 362 (1800 DEFENCE) 'Option 4'**
between 8.30-16.30 AEST

**DEFENCE
EXPORT
CONTROLS**





This document is designed to assist you in understanding Defence Export Control's regulatory framework. It may include some generalisations about the law.

Defence does not guarantee the accuracy, currency or completeness of any information contained in this document. Some provisions of the law referred to have exceptions or prerequisites, not all of which may be described here.

This document is not legal advice, nor intended to be legal advice. Your particular circumstances and activities must be taken into account when determining how the law applies to you, including other regulatory obligations beyond Defence Export Controls.