



# **Defence Trade Controls Amendment Act 2015**

**No. 31, 2015**

**An Act to amend the *Defence Trade Controls Act  
2012*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Defence Trade Controls Amendment Act 2015

No. 31, 2015

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## **An Act to amend the *Defence Trade Controls Act 2012*, and for related purposes**

[Assented to 2 April 2015]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Defence Trade Controls Amendment Act 2015*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 April 2015
2. Schedule 1, items 1 to 15	The day this Act receives the Royal Assent.	2 April 2015
3. Schedule 1, items 16 to 22	Immediately after the commencement of section 10 of the <i>Defence Trade Controls Act 2012</i> .	2 April 2016
4. Schedule 1, items 23 to 29	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of section 11 of the <i>Defence Trade Controls Act 2012</i> .	16 May 2015 (paragraph (b) applies)
5. Schedule 1, items 30 to 44	Immediately after the commencement of section 14 of the <i>Defence Trade Controls Act 2012</i> .	2 April 2016
6. Schedule 1, items 45 to 49	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of section 16 of the <i>Defence Trade Controls Act 2012</i> .	16 May 2015 (paragraph (b) applies)
7. Schedule 1, items 50 and 51	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of	16 May 2015 (paragraph (b) applies)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	section 20 of the <i>Defence Trade Controls Act 2012</i> .	
8. Schedule 1, items 52 to 77	The day this Act receives the Royal Assent.	2 April 2015

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 Schedules

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

## Schedule 1—Amendments

### *Defence Trade Controls Act 2012*

#### **1 Subsection 2(1) (table item 3)**

Repeal the item, substitute:

3. Section 10            The day after the end of the period of 12 months beginning on the day the *Defence Trade Controls Amendment Act 2015* receives the Royal Assent.

#### **2 Subsection 2(1) (table item 5)**

Repeal the item, substitute:

5. Sections 13 to 15        The day after the end of the period of 12 months beginning on the day the *Defence Trade Controls Amendment Act 2015* receives the Royal Assent.

#### **3 Subsection 2(1) (table item 7)**

Repeal the item, substitute:

7. Section 18            The day after the end of the period of 12 months beginning on the day the *Defence Trade Controls Amendment Act 2015* receives the Royal Assent.

#### **4 Subsection 2(1) (table item 10)**

Repeal the item, substitute:

10. Subsections 58(1) and (2)        The day after the end of the period of 12 months beginning on the day the *Defence Trade Controls Amendment Act 2015* receives the Royal Assent.

#### **5 Section 3**

Repeal the section, substitute:

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

### **6 Subsection 4(1) (definition of *arranges*)**

Repeal the definition, substitute:

*arranges*: see section 5A.

**7 Subsection 4(1)**

Insert:

*ASIO* means the Australian Security Intelligence Organisation.

*ASIS* means the Australian Secret Intelligence Service.

**8 Subsection 4(1) (definition of *Australian person*)**

Repeal the definition.

**9 Subsection 4(1) (definition of *foreign person*)**

Repeal the definition.

**10 Subsection 4(1)**

Insert:

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

*non-cash benefit* means property or services in any form other than money.

*publish* means publish on the internet or otherwise.

*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.

**11 Subsection 5A(1)**

Omit “(1)”.

**12 Subsection 5A(1)**

After “if”, insert “and only if”.

**13 Subparagraph 5A(1)(b)(i)**

Omit “commission, fee or other benefit”, substitute “money or non-cash benefit”.

**14 Subsection 5A(2)**

Repeal the subsection.

**15 Before Division 1 of Part 2**

Insert:

**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 DSGL technology;
- (b) arrange for other persons to supply goods in the Defence and Strategic Goods List or to supply DSGL technology;
- (c) publish DSGL technology in Part 1 of that list.

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

- (a) supplying DSGL technology;
- (b) publishing DSGL technology;
- (c) arranging for other persons to supply goods in the Defence and Strategic Goods List 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 goods in the Defence and Strategic Goods List or to supply DSGL technology. There is a process for becoming a registered broker.

**16 Subparagraphs 10(1)(c)(i) and (ii)**

Omit “of the DSGL technology”.

**17 After the heading to subsection 10(2)**

Insert:

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

- (a) the supply is not the provision of access to DSGL technology; and
- (b) the supply is made orally; and
- (c) the supply is neither for a military end-use nor for use in a Weapons of Mass Destruction program.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1A): see subsection 13.3(3) of the *Criminal Code*.

**18 Paragraph 10(3)(a)**

After “supplied by”, insert “or to”.

**19 Paragraph 10(3)(a)**

After “APS employee,”, insert “an employee of ASIO, an employee of ASIS,”.

**20 Paragraph 10(3)(b)**

Omit “he or she supplies the DSGL technology”, substitute “the supply occurs”.

**21 After subsection 10(3)**

Insert:

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

- (a) the supply is of DSGL technology within the scope of Part 2 of the Defence and Strategic Goods List; and
- (b) the supply is preparatory to the publication of the DSGL technology to the public or to a section of the public; and

- 
- (c) there is neither a notice in force under subsection 14B(1), nor a notice in force under subsection 14C(1), in relation to the supplier and the DSGL technology.

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

## **22 Subsection 10(5)**

Repeal the subsection.

## **23 Subsection 11(1)**

Omit “to another person”.

## **24 Subsections 11(2) and (3)**

Repeal the subsections, substitute:

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

Example 1: For paragraph (a)—an individual or a company applies for a permit to supply particular DSGL technology to various companies or to supply various DSGL technologies to one company.

Example 2: For paragraph (b)—an individual or a company applies for a permit to supply particular DSGL technology to one company for a 5-year period.

Example 3: For paragraph (c)—an individual or a company applies for a permit to supply particular DSGL technology to various companies for a particular project.

- (2A) An application by a person under subsection (1), that covers one or more supplies by the person for a project described in the application, may also cover one or more supplies by one or more other persons (each of whom is a *project participant*) for that project.

*Minister's decision*

- (3) If a person makes an application under subsection (1) in accordance with section 66:
- (a) the Minister must decide whether or not to give the person a permit for each supply, by the person, covered by the application; and
  - (b) if subsection (2A) applies—the Minister must decide whether or not to give each project participant a permit for each supply, by the participant, covered by the application.

**25 Subsection 11(4)**

Omit “give the person”, substitute “give a person”.

**26 Subsection 11(4)**

Omit “, having regard to the criteria prescribed by the regulations for the purposes of this subsection and to any other matters that the Minister considers appropriate,”.

**27 Subsection 11(5)**

Repeal the subsection, substitute:

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

**28 Subsection 11(6)**

Omit “to give the person”, substitute “to give a person”.

**29 Subsection 12(3)**

Omit “7”, substitute “14”.

**30 Section 14 (heading)**

Repeal the heading, substitute:

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**14 Minister's notice prohibiting supply of DSGL technology****31 Subsection 14(1)**

Omit "believes or suspects", substitute "reasonably believes".

**32 Section 14A**

Repeal the section, substitute:

**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.

- (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 DSSL 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 DSSL 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.

*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 DSSL 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 DSGL 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 DSGL 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 DSGL 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).

### 33 Before subsection 15(1)

Insert:

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

### 34 Subparagraph 15(1)(a)(i)

After “listed in”, insert “Part 1 of”.

### 35 Subparagraph 15(1)(a)(ii)

After “where”, insert “the DSGL technology is within the scope of Part 1 of the Defence and Strategic Goods List and”.

### 36 After paragraph 15(1)(b)

Insert:

; and (c) there is no notice in force under subsection 15A(1) in relation to the first person and the arrangement.

### 37 After subsection 15(1)

Insert:

*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:
  - (a) either:

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- (i) the first person arranges for another person to supply goods, where the 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 goods or DSGL technology will or may be for a military end-use; 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.

### **38 Subsection 15(2)**

After “Subsection (1)”, insert “or (1A)”.

### **39 Paragraph 15(2)(a)**

After “APS employee,”, insert “an employee of ASIO, an employee of ASIS,”.

### **40 Subsection 15(3)**

After “Subsection (1)”, insert “or (1A)”.

### **41 Subsection 15(4)**

Repeal the subsection, substitute:

- (4) Subsection (1) or (1A) does not apply if:
- (a) either:
    - (i) the first person arranges for the other person to supply the 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
- (b) that 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; 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).

(4B) Subsection (1) or (1A) does not apply if the first person arranges for the other person to supply the 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 goods, where the 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

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- 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 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.

#### **42 At the end of subsection 15(5)**

Add “, (1A) or (4D)”.

#### **43 Subsection 15(6)**

Insert:

*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.

#### **44 After section 15**

Insert:

#### **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 goods listed in the Defence and Strategic Goods List from a place outside Australia to another place outside Australia; or

(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 goods, where the goods are listed in 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 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 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.

*Offence*

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

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

**45 Section 16 (heading)**

Repeal the heading, substitute:

**16 Permits for purposes of section 15 or 15B**

**46 Subsection 16(2)**

Repeal the subsection, substitute:

- (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 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 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 goods for a particular project.

#### **47 Subsection 16(4)**

Omit “, having regard to the criteria prescribed by the regulations for the purposes of this subsection and to any other matters that the Minister considers appropriate.”.

#### **48 Subsection 16(5)**

Repeal the subsection, substitute:

- (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.

#### **49 Subsection 17(3)**

Omit “7”, substitute “14”.

#### **50 At the end of section 20**

Add:

*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.

#### **51 At the end of Part 2**

Add:

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**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 must refer the matter to the Minister to decide personally: see subsections 73(7) and (8).

**52 Division 1 of Part 3**

Repeal the Division, substitute:

**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.

**53 Section 37**

Repeal the section, substitute:

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### **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.

### **54 Subsection 40(3) (note)**

Repeal the note.

### **55 Subsection 43(3) (note)**

Repeal the note.

### **56 Subsection 48(2) (note)**

Repeal the note.

### **57 Section 49 (note)**

Repeal the note.

### **58 Before section 52**

Insert:

### **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.

### **59 Before section 58**

Insert:

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**57A Simplified outline of this Part**

Persons holding permits under Part 2 must keep records of supplies or arrangements the persons make under the permits.

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

Records must be retained for 5 years and may need to be produced to the Secretary.

**60 Before section 63**

Insert:

**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.

**61 Section 63**

Before “For”, insert “(1)”.

**62 Paragraph 63(a)**

Omit “the person’s”, substitute “an”.

**63 After paragraph 63(c)**

Insert:

- (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;

#### **64 At the end of section 63**

Add:

- (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*.

#### **65 Subsection 64(1)**

Repeal the subsection, substitute:

*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.

#### **66 Before section 66**

Insert:

#### **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.

#### **67 Subsection 68(1)**

Repeal the subsection, substitute:

*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



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(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.

**68 Section 72 (heading)**

Repeal the heading, substitute:

**72 Evidential certificates**

**69 Subsection 72(1)**

After “subsection 14(1)”, insert “, 14B(1), 15A(1) or 15B(1)”.

**70 Subsection 72(1)**

After “specified person”, insert “and specified matters”.

**71 After subsection 72(1)**

Insert:

(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.

**72 Subsection 72(2)**

After “subsection (1)”, insert “or (1A)”.

**73 Subsection 73(2)**

Omit “subsection 14A(3),”, substitute “subsection 14A(8), section 14B or 15A,”.

**74 Subsection 73(7) (table item 1)**

Omit “the person’s”, substitute “an”.

**75 Subsection 73(7) (after table item 1)**

Insert:

1A	A decision under section 14A to refuse to give a person an approval for the publication of the DSGL technology	The publication of that DSGL technology
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covered by the person's application for  
an approval

**76 Subsection 74(2)**

Omit "section 39", substitute "section 14C, 39 or 72".

**77 After section 74A**

Insert:

**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.

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*[Minister's second reading speech made in—  
House of Representatives on 26 February 2015  
Senate on 4 March 2015]*

(11/15)

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