



# **Defence Trade Controls Amendment Act 2024**

**No. 21, 2024**

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

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Defence Trade Controls Amendment Act 2024

No. 21, 2024

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

[Assented to 8 April 2024]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Defence Trade Controls Amendment Act 2024*.

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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.	8 April 2024
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 September 2024 (F2024N00654)
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Defence Amendment (Safeguarding Australia's Military Secrets) Act 2024</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted.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.

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### *Defence Trade Controls Act 2012*

#### 1 Section 3

Omit:

- (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.

substitute:

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

#### 2 Subsection 4(1)

Insert:

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

*Australian person* means:

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

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

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



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

- (a) is given:
  - (i) by the Australian Government Security Vetting Agency or by another Commonwealth agency that is authorised or approved by the Commonwealth to issue security clearances; or
  - (ii) by or on behalf of the Government of Canada, New Zealand, the United Kingdom or the United States of America, or an authority of any of those governments; and
- (b) is of a kind prescribed by the regulations for the purposes of this definition.

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

***DSGL services*** means the giving of assistance (including training) in relation to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing or use of DSGL goods that are, or DSGL technology that is, within the scope of Part 1 of the Defence and Strategic Goods List.

### **3 Subsection 4(1) (definition of *DSGL technology*)**

Repeal the definition, substitute:

***DSGL technology*** means a thing that:

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

### **4 Subsection 4(1)**

Insert:

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

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

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

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

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

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

## 5 After section 5A

Insert:

### 5AA Australian Military Sales Program items

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

### 5B Constitutional supplies and constitutional DSGL services

*Constitutional supplies*

- (1) A supply of DSGL goods or DSGL technology is a *constitutional supply* if:
  - (a) the supply is made by, or on behalf of, or to:
    - (i) a constitutional corporation; or
    - (ii) a body corporate that is incorporated in a Territory; or
    - (iii) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
  - (b) the supply is made by, or on behalf of, or to:

- (i) the government of a foreign country or of part of a foreign country; or
- (ii) an authority of the government of a foreign country; or
- (iii) an authority of the government of part of a foreign country; or
- (c) the supply is made by or to an alien (within the meaning of paragraph 51(xix) of the Constitution); or
- (d) the supply occurs wholly or partly outside Australia; or
- (e) the supply is made in the course of constitutional trade or commerce; or
- (f) the supply occurs wholly or partly within a Territory; or
- (g) the supply is made by way of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

*Constitutional DSGL services*

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

- (g) the DSGL services are provided by way of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

*Definitions*

- (3) In this section:

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

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

- (a) between Australia and places outside Australia; or
- (b) among the States; or
- (c) within a Territory, between a State and a Territory or between 2 Territories.

## 5C Relevant supplies and relevant DSGL services

*Relevant supplies*

- (1) A supply of DSGL goods or DSGL technology is a **relevant supply** unless:
  - (a) the supply is covered by subsection (1A), (1B) or (1C); and
  - (b) any requirements prescribed by the regulations for the purposes of this paragraph that apply in relation to the supply are satisfied.
- (1A) This subsection covers a supply of DSGL goods or DSGL technology if:
  - (a) the supply is to any of the following:
    - (i) an Australian person;
    - (ii) a citizen or permanent resident of the United Kingdom or United States of America;
    - (iii) a body corporate incorporated by or under a law of the United Kingdom or United States of America, or of part of either of those countries;
    - (iv) the Government of the United Kingdom or United States of America, or the government of part of either of those countries;

- (v) an authority of the Government of the United Kingdom or United States of America, or the government of part of either of those countries; and
  - (b) either:
    - (i) the supply is to, or occurs wholly at, a place in Australia, the United Kingdom or the United States of America; or
    - (ii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, the person to whom the access is provided is in Australia, the United Kingdom or the United States of America; and
  - (c) the DSGL goods or DSGL technology is not:
    - (i) an Australian Military Sales Program item; or
    - (ii) excluded by a determination in force under subsection (3).
- (1B) This subsection covers a supply of DSGL goods or DSGL technology if:
- (a) the DSGL goods or DSGL technology is:
    - (i) an Australian Military Sales Program item; or
    - (ii) any other DSGL goods or DSGL technology not excluded by a determination in force under subsection (3); and
  - (b) the supply is made in accordance with an agreement or arrangement between Australia and one or more foreign countries, including an agreement, arrangement or understanding between a Minister and an official or authority of one or more foreign countries.
- (1C) This subsection covers a supply of DSGL technology if:
- (a) the supply is to any of the following:
    - (i) a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A);
    - (ii) a body corporate incorporated by or under a law of a foreign country that is specified in an instrument under that subsection; or of part of such a country;

- (iii) the government of a foreign country that is specified in an instrument under that subsection, or of part of such a country;
- (iv) an authority of the government of a foreign country that is specified in an instrument under that subsection, or the government of part of such a country; and
- (b) any of the following applies:
  - (i) the place from which the supply is made and the place to which the supply is made are both in Australia;
  - (ii) the supply occurs wholly at a place in Australia;
  - (iii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, both the person providing the access and the person to whom the access is provided are in Australia; and
- (c) the DSGL goods or DSGL technology is not:
  - (i) an Australian Military Sales Program item; or
  - (ii) excluded by a determination in force under subsection (3).

*Relevant DSGL services*

- (2) DSGL services are **relevant DSGL services** unless:
  - (a) the provision of the DSGL services is covered by subsection (2A) or (2B); and
  - (b) any requirements prescribed by the regulations for the purposes of this paragraph that apply in relation to the provision of the DSGL services are satisfied.
- (2A) This subsection covers the provision of DSGL services if:
  - (a) the DSGL services are provided to any of the following:
    - (i) an Australian person;
    - (ii) a citizen or permanent resident of Canada, New Zealand, the United Kingdom or the United States of America;
    - (iii) a body corporate incorporated by or under a law of Canada, New Zealand, the United Kingdom or the United States of America, or of part of such a country;

- (iv) the Government of Canada, New Zealand, the United Kingdom or the United States of America, or the government of part of such a country;
  - (v) an authority of the Government of Canada, New Zealand, the United Kingdom or the United States of America, or the government of part of such a country; and
  - (b) the DSGL services are received at a place in Australia, Canada, New Zealand, the United Kingdom or the United States of America; and
  - (c) the DSGL goods or DSGL technology to which the DSGL services relate is not:
    - (i) an Australian Military Sales Program item; or
    - (ii) excluded by a determination in force under subsection (3).
- (2B) This subsection covers the provision of DSGL services if:
- (a) the DSGL goods or DSGL technology to which the DSGL services relate is:
    - (i) an Australian Military Sales Program item; or
    - (ii) any other DSGL goods or DSGL technology not excluded by a determination in force under subsection (3); and
  - (b) the DSGL services are provided in accordance with an agreement or arrangement between Australia and one or more foreign countries, including an agreement, arrangement or understanding between a Minister and an official or authority of one or more foreign countries.

*Excluded DSGL goods or DSGL technology*

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

*Definitions*

- (4) In this section:  
**place** includes:

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

## 6 Section 9A

Omit:

- (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.

substitute:

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

## 7 Section 9A (after the paragraph beginning “There are offences for persons”)

Insert:

The offences regarding supplies deal with the following:

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

Certain activities involving persons with a specified connection to Australia, the United Kingdom or the United States of America, and in some cases certain other countries, or activities involving



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arrangements between countries, are excluded from being covered by the offences.

**8 Section 9A**

Omit:

(c) arranging for other persons to supply goods in the Defence and Strategic Goods List or to supply DSGL technology.

substitute:

(c) arranging for other persons to supply DSGL goods or to supply DSGL technology.

**9 Section 9A (paragraph beginning “Registered brokers”)**

Omit “goods in the Defence and Strategic Goods List”, substitute “DSGL goods”.

**10 Section 10 (at the end of the heading)**

Add “from in Australia to outside Australia”.

**11 After paragraph 10(1)(b)**

Insert:

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

**12 Subsection 10(1A)**

Repeal the subsection, substitute:

*Absolute liability*

(1A) Absolute liability applies to paragraph (1)(ba).

*Application to supplies to employees etc.*

(1B) For the purposes of subsection (1), if the supplier is not an individual and supplies DSGL technology to an officer or employee of the supplier, the supply is taken to be a supply by the

supplier to another person (that other person being the officer or employee).

**13 Before subsection 10(2)**

Insert:

*Exceptions*

**14 Subsections 10(3) and (3A)**

Repeal the subsections, substitute:

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

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

- (3A) Subsection (1) does not apply if:
- (a) the DSGL technology is supplied by or to a person who is a member of the Australian Defence Force, an APS employee, an employee of ASIO, an employee of ASIS, an employee of ASD, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
  - (b) the supply occurs in the course of the person's duties as such a person; and
  - (c) the DSGL technology is not:
    - (i) an Australian Military Sales Program item; or
    - (ii) specified in a determination in force under subsection 5C(3); or

- (iii) prescribed by the regulations for the purposes of this subparagraph.

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

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

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

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

## **15 After section 10**

Insert:

### **10A Offence—supply of DSGL technology in Australia to foreign person**

- (1) A person (the *supplier*) commits an offence if:
  - (a) the supplier supplies DSGL technology to another person; and
  - (b) the other person is a foreign person; and
  - (c) the supply is a constitutional supply; and
  - (d) the supply is a relevant supply; and
  - (e) any of the following applies:
    - (i) the place from which the supply is made and the place to which the supply is made are both in Australia;
    - (ii) the supply occurs wholly at a place in Australia;
    - (iii) if the supply is the provision of access to DSGL technology—at the time of the provision of access, both the supplier and the other person are in Australia; and
  - (f) either:

- (i) the supplier does not hold a permit under section 11 authorising the supply; or
- (ii) the supply contravenes a condition of a permit that the supplier holds under section 11; and
- (g) there is no notice in force under subsection 14(1) in relation to the supplier and the supply.

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

*Absolute liability*

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

*Application to supplies to employees etc.*

- (3) For the purposes of subsection (1), if the supplier is not an individual and supplies DSGL technology to an officer or employee of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the officer or employee).

*Exceptions*

- (4) Subsection (1) does not apply if:
- (a) the supply is of DSGL technology in relation to original goods; and
  - (b) the supply is by an Australian Community member or by a member of the United States Community; and
  - (c) the supply is to an Australian Community member or a member of the United States Community; and
  - (d) the supply is for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
  - (e) at the time of the supply, the original goods are listed in Part 1 of the Defense Trade Cooperation Munitions List; and
  - (f) at the time of the supply, the original goods are not listed in Part 2 of the Defense Trade Cooperation Munitions List.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (6) Subsection (1) does not apply if:
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- (a) the DSGL technology is supplied by or to a person who is a member of the Australian Defence Force, an APS employee, an employee of ASIO, an employee of ASIS, an employee of ASD, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
  - (b) the supply occurs in the course of the person's duties as such a person; and
  - (c) the DSGL technology is not:
    - (i) an Australian Military Sales Program item; or
    - (ii) specified in a determination in force under subsection 5C(3); or
    - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

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

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

- (7A) Subsection (1) does not apply if:
  - (a) the DSGL technology is supplied to a person who is producing, or is to produce, one or more components of DSGL goods; and
  - (b) the supply is made in connection with the production of the components; and
  - (c) any requirements prescribed by the regulations for the purposes of this paragraph are satisfied.

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

- (8) Subsection (1) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection.

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

*Definitions*

- (9) In this section:

**place** includes:

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

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

- (1) A person (the **supplier**) commits an offence if:
- (a) the supplier supplies (the **current supply**) DSGL goods, other than firearms, or DSGL technology to another person; and
  - (aa) the DSGL goods or DSGL technology is within the scope of:
    - (i) Part 1 of the Defence and Strategic Goods List; or
    - (ii) the Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; or
    - (iii) the Very Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; and
  - (b) the current supply is a constitutional supply; and
  - (c) the current supply is a relevant supply; and
  - (d) any of the following applies:
    - (i) the current supply occurs wholly at a place outside Australia;
    - (ii) the current supply is from a place outside Australia and is to a place outside Australia;
    - (iii) if the current supply is the provision of access to DSGL technology—at the time of the provision of access, the supplier is outside Australia and the other person is outside Australia; and

- (e) the supplier obtained the DSGL goods or DSGL technology as a direct or indirect result of the export or supply (the *earlier export or supply*) of the DSGL goods or DSGL technology:
  - (i) from a place in Australia to a place outside Australia; or
  - (ii) if the earlier export or supply was the provision of access to DSGL technology—in circumstances where, at the time of the provision of access, the person providing access was in Australia and the person to whom access was provided was outside Australia; and
- (f) either of the following (whether or not obtained) was required in relation to the earlier export or supply:
  - (i) permission (however described) under regulations made under the *Customs Act 1901*;
  - (ii) a permit given under section 11 of this Act; and
- (g) either:
  - (i) the supplier does not hold a permit under section 11 authorising the current supply; or
  - (ii) the current supply contravenes a condition of a permit that the supplier holds under section 11; and
- (h) there is no notice in force under subsection 14(1) in relation to the supplier and the current supply.

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

*Application to supplies to employees etc.*

- (2) For the purposes of subsection (1), if the supplier is not an individual and supplies DSGL goods or DSGL technology to an officer or employee of the supplier, the supply is taken to be a supply by the supplier to another person (that other person being the officer or employee).

*Absolute and strict liability*

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

*Exceptions*

- (5) Subsection (1) does not apply if:
- (a) the current supply is of:
    - (i) goods that are an Article 3(1) US Defence Article; or
    - (ii) goods that are an Article 3(3) US Defence Article; or
    - (iii) DSGL technology in relation to original goods; and
  - (b) the current supply is by an Australian Community member or by a member of the United States Community; and
  - (c) the current supply is to an Australian Community member or a member of the United States Community; and
  - (d) the current supply is for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
  - (e) at the time of the current supply, the following are listed in Part 1 of the Defense Trade Cooperation Munitions List:
    - (i) if the supply is of original goods or DSGL technology in relation to original goods—the original goods;
    - (ii) if the supply is of incorporated goods—any of the original goods incorporated in the incorporated goods; and
  - (f) at the time of the current supply, the following are not listed in Part 2 of the Defense Trade Cooperation Munitions List:
    - (i) if the supply is of original goods or DSGL technology in relation to original goods—the original goods;
    - (ii) if the supply is of incorporated goods—any of the original goods incorporated in the incorporated goods.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.
- (6) Subsection (1) does not apply if, in relation to the current supply:
- (a) the DSGL goods or DSGL technology is supplied by or on behalf of a person or body to an officer or employee of the person or body; and
  - (b) the officer or employee is:
    - (i) an Australian citizen or permanent resident of Australia; or



- (ii) a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A); and
- (c) the supply occurs in the course of the officer or employee's duties as an officer or employee.

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

- (7) Subsection (1) does not apply if, in relation to the current supply:
- (a) the DSGL goods or DSGL technology is supplied by or to a person who is a member of the Australian Defence Force, an APS employee, an employee of ASIO, an employee of ASIS, an employee of ASD, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
  - (b) the supply occurs in the course of the person's duties as such a person; and
  - (c) the DSGL goods or DSGL technology is not:
    - (i) an Australian Military Sales Program item; or
    - (ii) specified in a determination in force under subsection 5C(3); or
    - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

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

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

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

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

(8B) Subsection (1) does not apply if:

(a) the DSGL goods or DSGL technology is within the scope of:

- (i) the Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; or
- (ii) the Very Sensitive List of Dual-use Goods and Technologies in Part 2 of the Defence and Strategic Goods List; and

(b) any of the following applies:

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

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

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

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

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

- (a) the earlier export or supply was made in accordance with a permission or permit mentioned in paragraph (1)(f); and

- (b) the permission or permit was granted before the commencement of this section.

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

- (9) Subsection (1) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

*Geographical jurisdiction*

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

*Definitions*

- (11) In this section:

**place** includes:

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

**10C Offence—provision of DSGL services outside Australia**

- (1) A person (the **provider**) commits an offence if:
  - (a) the provider provides DSGL services to another person; and
  - (b) the other person is a foreign person; and
  - (c) the DSGL services are constitutional DSGL services; and
  - (d) the DSGL services are relevant DSGL services; and
  - (e) the provider is an Australian person; and
  - (ea) the provider provides the DSGL services at or from a place outside Australia; and
  - (eb) the other person receives the DSGL services at a place outside Australia; and
  - (f) either:
    - (i) the provider does not hold a permit under section 11 authorising the provision of the DSGL services; or

- (ii) the provision of the DSGL services contravenes a condition of a permit that the provider holds under section 11; and
- (g) there is no notice in force under subsection 14(1) in relation to the provider and the provision of the DSGL services.

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

*Absolute liability*

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

*Exceptions*

- (3) Subsection (1) does not apply if:
  - (a) the DSGL services are provided in relation to:
    - (i) goods that are an Article 3(1) US Defence Article; or
    - (ii) goods that are an Article 3(3) US Defence Article; or
    - (iii) DSGL technology in relation to original goods; and
  - (b) the DSGL services are provided by an Australian Community member or by a member of the United States Community; and
  - (c) the DSGL services are provided to an Australian Community member or a member of the United States Community; and
  - (d) the DSGL services are for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
  - (e) at the time of the provision of the DSGL services, the following are listed in Part 1 of the Defense Trade Cooperation Munitions List:
    - (i) if the DSGL services are provided in relation to original goods or DSGL technology in relation to original goods—the original goods;
    - (ii) if the DSGL services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods; and
  - (f) at the time of the provision of the DSGL services, the following are not listed in Part 2 of the Defense Trade Cooperation Munitions List:

- (i) if the DSGL services are provided in relation to original goods or DSGL technology in relation to original goods—the original goods;
- (ii) if the DSGL services are provided in relation to incorporated goods—any of the original goods incorporated in the incorporated goods.

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

- (4) Subsection (1) does not apply if:
- (a) the DSGL services are provided by or on behalf of a person or body to an officer or employee of the person or body; and
  - (b) the officer or employee is a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A); and
  - (c) the provision of the DSGL services occurs in the course of the officer or employee’s duties as an officer or employee.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) Subsection (1) does not apply if:
- (a) the DSGL services are provided in support of a lawful supply of DSGL goods or DSGL technology; and
  - (b) the DSGL services solely consist of training with respect to, or the performance of, maintenance relating to the DSGL goods or DSGL technology; and
  - (c) the maintenance covered by the training, or which is performed, is limited to inspection, testing, calibration or repair (including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components); and
  - (d) the maintenance covered by the training, or which is performed, does not include any modification, enhancement, upgrade or other form of alteration or improvement that:
    - (i) enhances the performance or capability of the DSGL goods or DSGL technology; and
    - (ii) is not only an alteration or improvement in relation to the reliability or maintainability of the DSGL goods or DSGL technology.

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

- (6) Subsection (1) does not apply if:
- (a) the DSGL services are provided by or to a person who is a member of the Australian Defence Force, an APS employee, an employee of ASIO, an employee of ASIS, an employee of ASD, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
  - (b) the provision of the DSGL services occurs in the course of the person's duties as such a person; and
  - (c) the DSGL services are not provided in relation to DSGL goods or DSGL technology that is:
    - (i) an Australian Military Sales Program item; or
    - (ii) specified in a determination in force under subsection 5C(3); or
    - (iii) prescribed by the regulations for the purposes of this subparagraph.

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

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

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

- (7A) Subsection (1) does not apply if:
- (a) the DSGL services are provided in connection with a lawful supply of DSGL goods or DSGL technology that occurred before the commencement of this section; and

- (b) the DSGL services are provided under a contract, agreement or arrangement entered into before the commencement of this section.

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

- (8) Subsection (1) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection.

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

*Geographical jurisdiction*

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

*Definitions*

- (10) In this section:

*place* includes:

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

**16 Section 11 (heading)**

Repeal the heading, substitute:

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

**17 Subsections 11(1) to (6)**

Repeal the subsections, substitute:

- (1) A person may apply to the Minister for a permit under this section to do an activity that is:
  - (a) a constitutional supply of DSGL goods; or
  - (b) a constitutional supply of DSGL technology; or
  - (c) the provision of constitutional DSGL services.

Note: Section 66 sets out application requirements.

- (2) Without limiting subsection (1), an application by a person under that subsection may do one or more of the following:
  - (a) cover 2 or more activities by the person;
  - (b) cover one or more activities by the person for a period described in the application;
  - (c) cover one or more activities by the person for one or more projects described in the application.
- (2A) An application by a person under subsection (1), that covers one or more activities by the person for one or more projects described in the application, may also cover one or more activities by one or more other persons (each of whom is a *project participant*) for those projects.

*Minister's decision*

- (3) If a person makes an application under subsection (1) in accordance with section 66:
  - (a) the Minister must decide whether or not to give the person a permit for each activity, by the person, covered by the application; and
  - (b) if subsection (2A) of this section applies—the Minister must decide whether or not to give each project participant a permit for each activity, by the participant, covered by the application.
- (4) The Minister may give a person a permit for a specified activity if the Minister is satisfied that the activity would not prejudice the security, defence or international relations of Australia.

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

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



- (6) If the Minister refuses to give a person a permit for an activity covered by the application, the Minister must give the person notice of the refusal and the reasons for the refusal.

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

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

## **18 After subsection 11(7)**

Insert:

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

## **19 At the end of section 11**

Add:

- (11) A notice under subsection (10) must set out the effect of subsections (12) and (13).

### *Certain obligations to continue after revocation*

- (12) If the Minister revokes a permit given to a person under this section that specifies conditions imposing obligations mentioned in subsection (7A) that apply after an activity covered by the permit is done, the permit is taken to continue in force for the purposes of:
- (a) sections 12 (changing permit conditions) and 13 (breaching permit conditions); and
  - (b) any other provision of this Act to the extent it relates to those sections.

- (13) However, the Minister must not impose a new permit condition in relation to the permit under subsection 12(1).

**20 Subsection 13(3)**

Repeal the subsection, substitute:

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

**21 Section 14 (heading)**

Repeal the heading, substitute:

**14 Minister’s notice prohibiting activities**

**22 Subsection 14(1)**

Repeal the subsection, substitute:

- (1) If the Minister reasonably believes that, if a person were to do one of the activities covered by subsection (1A) in any circumstances or in particular circumstances, the activity would prejudice the security, defence or international relations of Australia, the Minister may give the person a notice:
- (a) prohibiting the person from doing the activity; or
  - (b) prohibiting the person from doing the activity unless conditions specified in the notice are complied with.

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

- (1A) The activities are as follows:
- (a) a constitutional supply of particular DSGL goods at or from a place outside Australia to a foreign person;
  - (b) a constitutional supply to another person of particular DSGL technology;
  - (c) the provision of particular constitutional DSGL services.
- (1B) Subsection (1A) does not cover an activity that would occur wholly outside Australia unless:
- (a) the activity would be done by or on behalf of an Australian person; or

- 
- (b) the activity would relate to DSGL goods or DSGL technology in circumstances where the DSGL goods or DSGL technology would have been obtained as a direct or indirect result of the export or supply of the DSGL goods or DSGL technology:
- (i) from a place in Australia to a place outside Australia; or
  - (ii) if that supply were the provision of access to DSGL technology—in circumstances where, at the time of the provision of access, the person providing access was in Australia and the person to whom access was provided was outside Australia.

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

### **23 Paragraphs 14(10)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the person:
  - (i) supplies DSGL goods; or
  - (ii) supplies DSGL technology; or
  - (iii) provides DSGL services; and
- (b) the supply of the DSGL goods or DSGL technology, or provision of the DSGL services, contravenes a notice, or a condition specified in a notice, that is in force under subsection (1); and

### **24 Subsection 14(11)**

Repeal the subsection, substitute:

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

#### *Definitions*

- (12) In this section:

***place*** includes:

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

**25 Subparagraph 15(1)(a)(i)**

Omit “goods, where the goods”, substitute “DSGL goods, where the DSGL goods”.

**26 After paragraph 15(1)(a)**

Insert:

- (aa) the supply is, or is to be, a relevant supply; and

**27 Subparagraph 15(1A)(a)(i)**

Omit “goods, where the goods”, substitute “DSGL goods, where the DSGL goods”.

**28 Paragraph 15(1A)(b)**

Omit “goods”, substitute “DSGL goods”.

**29 After paragraph 15(1A)(b)**

Insert:

- (ba) the supply is, or is to be, a relevant supply; and

**30 Subparagraph 15(4)(a)(i)**

Omit “goods”, substitute “DSGL goods”.

**30A Paragraph 15(4)(b)**

Repeal the paragraph.

**30B After subsection 15(4A)**

Insert:

- (4AA) The Minister must not specify a foreign country in an instrument made under subsection (4A) unless:
  - (a) the foreign country is:
    - (i) a Participating State for the purposes of the Wassenaar Arrangement; and
    - (ii) a participant in the Australia Group; and

- (iii) a partner in the Missile Technology Control Regime;  
and
- (iv) a participant in the Nuclear Suppliers Group; or
- (b) the Minister is satisfied that specifying the foreign country in the instrument is in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being.

**31 Subsection 15(4B)**

Omit "goods", substitute "DSGL goods".

**32 Subparagraph 15(4D)(a)(i)**

Omit "goods, where the goods", substitute "DSGL goods, where the DSGL goods".

**33 Paragraph 15(4D)(b)**

Omit "goods", substitute "DSGL goods".

**34 Paragraph 15A(1)(a)**

Omit "goods listed in the Defence and Strategic Goods List", substitute "DSGL goods".

**35 Subparagraph 15A(10)(a)(i)**

Omit "goods, where the goods are listed in the Defence and Strategic Goods List and", substitute "DSGL goods, where".

**36 Paragraph 15B(1)(a)**

Omit "specified goods", substitute "specified DSGL goods".

**37 Subparagraph 15B(7)(a)(i)**

Omit "goods, where the goods", substitute "DSGL goods, where the DSGL goods".

**38 Paragraph 16(1)(a)**

Omit "goods, where the goods are listed in the Defence and Strategic Goods List", substitute "DSGL goods".

**39 Subsection 16(2) (examples 1, 2 and 3)**

Omit “goods”, substitute “DSGL goods”.

**40 Section 25A (note)**

Repeal the note, substitute:

Note: If after applying this section in relation to a decision under this Part, a delegate of the Minister is satisfied that a thing would prejudice the security, defence or international relations of Australia, the delegate may be required to refer the matter to the Minister or to a more senior delegate of the Minister: see subsections 73(7) to (10).

**40A Subsection 27(1) (note 2)**

Repeal the note, substitute:

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

**41 Subsection 58(1)**

Omit “supplies that the person makes”, substitute “activities that the person does”.

**41A Section 57A (paragraph beginning “Persons holding permits under Part 2”)**

After “make”, insert “or DSGL services the persons provide”.

**41B Section 57A (after the paragraph beginning “Persons holding approvals under section 27”)**

Insert:

Persons who make certain other supplies of DSGL goods or DSGL technology, or who provide certain DSGL services, must also keep records of those activities.
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**41C After subsection 58(3)**

Insert:

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*Records for other activities*

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

providing the access was in Australia and the person to whom the access was provided was outside Australia;  
and

- (c) either of the following (whether or not obtained) was required in relation to the export or supply mentioned in paragraph (b):
- (i) permission (however described) under regulations made under the *Customs Act 1901*;
  - (ii) a permit given under section 11 of this Act.

(3D) If an Australian person provides any constitutional DSGL services to a foreign person at or from a place outside Australia, that are received at a place outside Australia, the Australian person must keep records of the provision of the DSGL services, unless:

- (a) the DSGL services are provided under a permit given to the Australian person under section 11; or
- (b) the circumstances prescribed by the regulations for the purposes of this paragraph apply.

#### **41D At the end of section 58**

Add:

##### *Definition*

(9) In this section:

*place* includes:

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

#### **42 Paragraph 63(1)(a)**

Omit “a supply”, substitute “an activity”.

#### **43 Subsection 73(2)**

Omit “subsection 11(8), section 14”, substitute “section 11, 12 or 14”.

#### **44 After subsection 73(2)**

Insert:

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

- (2A) Subject to subsection (2B), the Minister may, by writing, delegate all or any of the Minister's functions or powers under section 11 or 12 to:
- (a) the Secretary; or
  - (b) an SES employee, or acting SES employee, in the Department; or
  - (c) an APS employee who holds, or is acting in, an Executive Level 1 or 2, or equivalent, position in the Department.
- (2B) The Minister may only delegate the Minister's functions or powers under subsection 11(8) to:
- (a) the Secretary; or
  - (b) an SES employee, or acting SES employee, in the Department.
- (2C) The Minister may, by writing, delegate all or any of the Minister's functions or powers under section 14 to:
- (a) the Secretary; or
  - (b) an SES employee, or acting SES employee, in the Department.

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

Repeal the item.

**46 At the end of section 73**

Add:

- (9) A delegate mentioned in paragraph (2A)(c) must not make a decision under section 11 to refuse to give a person a permit for an activity covered by an application for a permit, if the delegate is satisfied that the activity would prejudice the security, defence or international relations of Australia.
- (10) If subsection (9) applies:
- (a) the delegate must refer the particular case to:
    - (i) the Minister; or
    - (ii) a delegate mentioned in paragraph (2A)(a) or (b); and

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

#### **47 Application of amendments—offences etc.**

- (1) The amendments of section 10 of the *Defence Trade Controls Act 2012* made by this Schedule apply in relation to conduct occurring on or after the start day.
- (2) Sections 10A, 10B and 10C of the *Defence Trade Controls Act 2012*, as inserted by this Schedule, apply in relation to conduct occurring on or after the start day.
- (3) The amendments of section 14 of the *Defence Trade Controls Act 2012* made by this Schedule apply in relation to an activity done on or after the start day.
- (4) The amendments made by items 26 and 29 of this Schedule apply in relation to conduct occurring on or after the start day.
- (4A) The amendments of section 58 of the *Defence Trade Controls Act 2012* made by this Schedule apply in relation to activities done on or after the start day.
- (5) In this item:  
*start day* means the day after the end of the period of 6 months beginning on the day this item commences.

#### **48 Saving provision—permits**

If a permit given to a person under section 11 of the *Defence Trade Controls Act 2012* is in force immediately before this item commences, the permit continues in force (and may be dealt with) on and after that commencement as if it had been given under that section as amended by this Schedule.

**49 Saving provision—prohibition notices**

The amendments of section 14 of the *Defence Trade Controls Act 2012* made by this Schedule do not affect the continuity of a notice given to a person under that section that is in force immediately before this Schedule commences.

**49A Saving provision—foreign country list**

The amendments of section 15 of the *Defence Trade Controls Act 2012* do not affect the continuity of an instrument that is in force under subsection 15(4A) of that Act immediately before this Schedule commences.

**50 Saving provision—delegations**

The amendments of section 73 of the *Defence Trade Controls Act 2012* made by this Schedule do not affect the continuity of a delegation that is in force under that section immediately before this Schedule commences.

## Schedule 2—Contingent amendments

### *Defence Trade Controls Act 2012*

#### **1 After the heading to subsection 10C(3)**

Insert:

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

- (a) the DSGL services are provided by a person in circumstances where a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises the person to perform work for, or on behalf of:
  - (i) a military organisation (within the meaning of that Part) of a foreign country; or
  - (ii) a government body (within the meaning of that Part) of a foreign country; and
- (b) the person provides the DSGL services in the course of performing the work authorised by the foreign work authorisation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

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

- (a) the DSGL services are provided by a person in circumstances where a foreign work authorisation (within the meaning of Part IXAA of the *Defence Act 1903*) that is in force authorises the person to provide training to:
  - (i) a military organisation (within the meaning of that Part) of a foreign country; or
  - (ii) a government body (within the meaning of that Part) of a foreign country; and
- (b) the DSGL services provided solely consist of the training that is authorised by the foreign work authorisation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B): see subsection 13.3(3) of the *Criminal Code*.

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*[Minister's second reading speech made in—  
House of Representatives on 30 November 2023  
Senate on 21 March 2024]*

(155/23)

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*No. 21, 2024*

*Defence Trade Controls Amendment Act 2024*

*41*