



# **Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 19 April 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Angus Taylor  
Minister for Law Enforcement and Cybersecurity

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
Part 1—Main amendments		2
<i>Customs (Prohibited Exports) Regulations 1958</i>		2
Part 2—Consequential amendments		15
<i>Customs (Prohibited Imports) Regulations 1956</i>		15
<i>Defence Trade Controls Regulation 2013</i>		17
Part 3—Amendments of listed provisions		18
<i>Customs (Prohibited Exports) Regulations 1958</i>		18



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## 1 Name

This instrument is the *Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	21 April 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Customs Act 1901*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Main amendments

#### *Customs (Prohibited Exports) Regulations 1958*

##### 1 Subregulation 2(1)

Insert:

*defence and strategic goods list* means the document:

- (a) formulated by the Defence Minister, and published, as mentioned in paragraph 112(2A)(aa) of the Act; and
  - (b) known as the Defence and Strategic Goods List;
- as amended by the Defence Minister and in force from time to time.

*DSGL technology* has the meaning given by the *Defence Trade Controls Act 2012*.

*reviewable defence and strategic goods decision*: see regulation 13EE.

##### 2 Subregulations 13CR(1), 13CS(1) and 13CT(1) (definition of *defence and strategic goods list*)

Repeal the definition.

##### 3 Division 4 of Part 3 (heading)

Repeal the heading, substitute:

#### Division 4—Financial goods

##### 4 Regulation 13E

Repeal the regulation, substitute:

#### Division 4A—Defence and strategic goods

##### 13E Exportation of defence and strategic goods—general

###### *Prohibition of exportation*

- (1) The exportation from Australia of the following goods is prohibited, subject to this Division:
- (a) goods specified in the defence and strategic goods list;
  - (b) goods containing DSGL technology.

Note: See regulation 13EA for exceptions. Permission under subregulation (2) of this regulation is not required for the exportation of goods covered by those exceptions.

###### *Exportation with permission*

- (2) The exportation of goods is not prohibited under subregulation (1) if all of the following conditions are satisfied:

- (a) the Defence Minister has granted permission under this regulation for the exportation of the goods;
- (b) for goods containing DSGL technology—the permission is expressed to cover the DSGL technology;
- (c) the exportation of the goods is in accordance with the terms of the permission;
- (d) the permission is produced to a Collector.

*Decision on application for permission*

- (3) If a person (the **applicant**) makes an application for permission to export goods in accordance with regulation 13EB, the Defence Minister must:
- (a) consider whether to grant the permission sought; and
  - (b) either:
    - (i) grant the permission, by notice in writing to the applicant; or
    - (ii) refuse to grant the permission, by notice in writing to the applicant giving reasons for refusal.

Note: See regulation 13EG for how notices must be given, and when they are taken to be received.

*Criteria for granting permission*

- (4) The Defence Minister may only grant permission to the applicant if satisfied that the export of the goods, or of any DSGL technology contained in the goods, would not prejudice the security, defence or international relations of Australia, having regard to the following matters:
- (a) the criteria set out in the following table;
  - (b) any other matters the Defence Minister considers appropriate.

<b>Criteria for permissions</b>	
<b>Item</b>	<b>Criterion</b>
1	The risk that the goods or the DSGL technology may go to, or become available to, a country upon which the Security Council of the United Nations or Australia has imposed a sanction
2	The risk that the goods or the DSGL technology may go to, or become available to, a country where they may be used in a way contrary to Australia's international obligations or commitments
3	The risk that the goods or the DSGL technology may be used to commit or facilitate serious abuses of human rights
4	Whether the export of the goods or the DSGL technology: <ul style="list-style-type: none"> <li>(a) may aggravate:               <ul style="list-style-type: none"> <li>(i) an existing threat to international peace and security or to the peace and security of a region; or</li> <li>(ii) a particular event or conflict of concern to Australia; or</li> </ul> </li> <li>(b) may otherwise contribute to political instability internationally or in a particular region</li> </ul>
5	Whether the goods or the DSGL technology may: <ul style="list-style-type: none"> <li>(a) be used for conflict within a country or for international conflict by a country; or</li> <li>(b) further militarise conflict within a country</li> </ul>
6	Whether the export of the goods or the DSGL technology may compromise or adversely

**Schedule 1** Amendments  
**Part 1** Main amendments

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<b>Criteria for permissions</b>	
<b>Item</b>	<b>Criterion</b>
	affect Australia's defence or security interests, its obligations to its allies or its international obligations and responsibilities
7	Whether the goods or the DSGL technology may go to, or become available to, a country that has policies or strategic interests that are inconsistent with the policies and strategic interests of Australia or its allies
8	The risk that the export of the goods or the DSGL technology may: (a) adversely affect Australia's military capability; or (b) substantially compromise an Australian defence operation; or (c) increase the military capability of a country that is a potential adversary of Australia
9	The risk that the goods or the DSGL technology may go to, or become available to, a country: (a) that is developing, or is reasonably suspected of developing: (i) weapons that may be capable of causing mass destruction; or (ii) the means of delivering such weapons; or (b) that supports, or is reasonably suspected of supporting, terrorism; or (c) whose actions or foreign policies pose a risk of major disruption in global stability or the stability of a particular region
10	Whether the export of the goods or the DSGL technology may lead to a reaction by another country that may damage Australia's interests or relations with the other country or with a particular region
11	Whether the goods or the DSGL technology may be used for mercenary activities or a terrorist or other criminal activity
12	Whether preventing the export of the goods or the DSGL technology may have an adverse effect on Australian industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia

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*Terms and conditions of permission*

- (5) A permission may specify the terms subject to which the permission is granted, including any or all of the following (without limitation):
- (a) the type and amount of goods that may be exported;
  - (b) the persons to whom the goods may be exported;
  - (c) the overseas countries to which the goods may be exported;
  - (d) the number of shipments of the goods that may be exported;
  - (e) the period during which the goods may be exported.
- (6) A permission may be granted subject to any conditions stated in the permission, including (without limitation) conditions relating to the circumstances in which goods may be exported.

Note: Regulation 13EC deals with changing permission conditions.

**13EA Exportation of defence and strategic goods—no permission required under regulation 13E**

*Goods owned by defence forces*

- (1) The exportation of goods is not prohibited under subregulation 13E(1) if all of the following conditions are satisfied:



- (a) the goods are owned by the defence force of any of the following countries:
  - (i) Brunei Darussalam;
  - (ii) Canada;
  - (iii) Malaysia;
  - (iv) New Zealand;
  - (v) Papua New Guinea;
  - (vi) the Kingdom of Cambodia;
  - (vii) the Kingdom of Thailand;
  - (viii) the Republic of Fiji;
  - (ix) the Republic of Indonesia;
  - (x) the Republic of Singapore;
  - (xi) the Republic of the Philippines;
  - (xii) the United Kingdom;
  - (xiii) the United States of America;
  - (xiv) Tonga;
- (b) the goods have been imported into Australia by:
  - (i) the defence force that owns the goods; or
  - (ii) a member of that defence force to whom the goods have been issued;
- (c) the goods are exported from Australia by:
  - (i) the defence force that owns the goods; or
  - (ii) a member of that defence force to whom the goods have been issued;
- (d) the goods are not specified in item ML7, 1C350, 1C351, 1C352, 1C353, 1C354 or 1C450 of the defence and strategic goods list;
- (e) for goods containing DSGL technology—the goods contained the DSGL technology when they were imported.

*Air security*

- (2) The exportation of goods is not prohibited under subregulation 13E(1) if all of the following conditions are satisfied:
  - (a) the goods were last imported into Australia on an aircraft by a person (an ***air security officer***) covered by subregulation (3) while carrying out his or her duties;
  - (b) there is an arrangement between the foreign government employing the air security officer and the Government of Australia providing for the importation of the goods into Australia on aircraft by air security officers;
  - (c) immediately after the goods were imported, the air security officer surrendered the goods to an officer of Customs, authorised under subregulation (4), for secure storage until the goods are exported in accordance with paragraph (d);
  - (d) within 3 months after the goods were imported into Australia, the goods are exported from Australia.
- (3) A person is covered by this subregulation if he or she:
  - (a) is employed and trained by a foreign government to travel on an aircraft to provide security for the aircraft and its passengers and crew; and
  - (b) is not employed to provide exclusive personal protection for one or more specific people travelling on the aircraft (for example, as a personal bodyguard).

- (4) The Comptroller-General of Customs may, in writing, authorise an officer of customs for the purposes of paragraph (2)(c).

*Defence Trade Cooperation Treaty goods*

- (5) The exportation of goods is not prohibited under subregulation 13E(1) if all of the following conditions are satisfied:
- (a) the goods are one of the following:
    - (i) an Article 3(1) US Defence Article (within the meaning of the *Defence Trade Controls Act 2012*);
    - (ii) an Article 3(3) US Defence Article (within the meaning of that Act);
    - (iii) an Australian Defence Article (within the meaning of the *Defence Trade Controls Regulation 2013*);
    - (iv) goods constituting or containing DSGL technology in relation to goods referred to in subparagraph (i), (ii) or (iii);
  - (b) for goods containing DSGL technology—the technology is DSGL technology in relation to the goods;
  - (c) the goods are exported from Australia by an Australian Community member (within the meaning of the *Defence Trade Controls Act 2012*) to a member of the United States Community (within the meaning of that Act);
  - (d) the goods are exported from Australia for one or more of the activities referred to in Article 3(1)(a), (b), (c) or (d) of the Defence Trade Cooperation Treaty (within the meaning of the *Defence Trade Controls Act 2012*).

*DSGL technology—temporary export*

- (6) The exportation of goods is not prohibited under subregulation 13E(1) if all of the following conditions are satisfied:
- (a) the goods constitute, or contain, DSGL technology;
  - (b) for goods that contain DSGL technology, but do not constitute DSGL technology—the goods themselves are not specified in the defence and strategic goods list;
  - (c) the goods are exported from Australia for use by the exporter outside Australia;
  - (d) the exporter or, if the exporter is a body corporate, an employee, agent or officer of the body, will travel with the goods;
  - (e) the goods are not to be sold or transferred to, or used by, any person other than the exporter outside Australia;
  - (f) the DSGL technology constituted by, or contained in, the goods is not to be disclosed to any person other than the exporter outside Australia;
  - (g) the exporter intends to return to Australia with the goods or, if the exporter is a body corporate, the exporter intends that the goods are to be returned to Australia by an employee, agent or officer of the body travelling with the goods.

*DSGL technology—export following temporary import*

- (7) The exportation of goods is not prohibited under subregulation 13E(1) if all of the following conditions are satisfied:
- (a) the goods constitute, or contain, DSGL technology;

- (b) for goods that contain DSGL technology, but do not constitute DSGL technology—the goods themselves are not specified in the defence and strategic goods list;
- (c) the goods have been imported by a person to Australia from a foreign country for use by the person in Australia, and are exported from Australia to the same country, by the same person (the *exporter*);
- (d) the exporter or, if the exporter is a body corporate, an employee, agent or officer of the body, will travel with the goods when they are exported.

### **13EB Export defence and strategic goods—application for permission**

- (1) A person (the *applicant*) may apply to the Defence Minister for permission to export goods mentioned in subregulation 13E(1).
- (2) The application must:
  - (a) be in writing in the form approved by the Defence Minister under subregulation (6); and
  - (b) contain the information required by the form; and
  - (c) be accompanied by any documents required by the form.
- (3) The application must be made at least 37 days before the first proposed date of export if the application is to export goods specified in the following items of the defence and strategic goods list:
  - (a) item ML7.b.1;
  - (b) item ML7.b.2;
  - (c) item ML7.c;
  - (d) item 1C351.d.4;
  - (e) item 1C351.d.5.
- (4) The Defence Minister may, by notice in writing, request the applicant to give the Defence Minister such additional information as the Defence Minister considers necessary to enable the Defence Minister to decide the application.

Note: See regulation 13EG for how notices must be given, and when they are taken to be received.
- (5) The Defence Minister may defer consideration of the application until the applicant complies with the request.
- (6) The Defence Minister may approve, in writing, a form for the purposes of applying for permission under this regulation.

### **13EC Exportation of defence and strategic goods—changing permission conditions**

- (1) After granting a permission under regulation 13E, the Defence Minister may impose a new condition on the permission by giving the holder of the permission written notice of the condition. The notice must include the reasons for imposing the new condition.
- (2) The Defence Minister may remove or vary a condition of a permission by giving the holder of the permission written notice of the removal or variation.
- (3) A notice of the variation of a condition must include the reasons for the variation.

- (4) The imposition, removal or variation of a condition takes effect at the time specified in the notice under subregulation (1) or (2), which must be:
- (a) at least 14 days after the day on which the notice is given; or
  - (b) if the Minister is satisfied that the new condition, or the variation, needs to take effect at the time the notice is received for reasons of urgency—at that time.

Note 1: See regulation 13EG for how notices must be given, and when they are taken to be received.

Note 2: Regulation 13EH deals with disclosing reasons for decisions under this Division.

### **13ED Exportation of defence and strategic goods—revocation of permission**

- (1) The Defence Minister may, by notice in writing, revoke a permission granted to a person under regulation 13E if:
- (a) the permission is granted subject to a condition to be complied with by the holder of the permission, and the holder fails to comply with the condition; or
  - (b) the Defence Minister is satisfied that the exportation of any goods covered by the permission would prejudice the security, defence or international relations of Australia, having regard to the following matters:
    - (i) the criteria set out in the table in subregulation 13E(4);
    - (ii) any other matters the Defence Minister considers appropriate.
- (2) A notice of the revocation of a permission under subregulation (1) must include the reasons for the revocation.
- (3) The revocation takes effect when the holder is taken to have received the notice of revocation under regulation 13EG.

Note: See regulation 13EG for how notices must be given, and when they are taken to be received.

### **13EE Internal review of defence and strategic goods decisions**

#### *Meaning of reviewable defence and strategic goods decision*

- (1) Each of the following decisions is a **reviewable defence and strategic goods decision**:
- (a) a decision under subregulation 13E(3) to refuse to grant a permission;
  - (b) a decision under subregulation 13E(6) to impose a condition on a permission;
  - (c) a decision under subregulation 13EC(1) to impose a new condition on a permission;
  - (d) a decision under subregulation 13EC(2) to vary a condition imposed on a permission;
  - (e) a decision under subregulation 13ED(1) to revoke a permission.

#### *Request for internal review*

- (2) If a reviewable defence and strategic goods decision is made by a delegate of the Defence Minister, any person whose interests are affected by the decision, and who is dissatisfied with the decision, may request the Defence Minister to review the decision personally.

- (3) The request must be made by written notice given to the Defence Minister:
  - (a) within 30 days after the day on which the person is taken to have received notice of the decision under regulation 13EG; or
  - (b) within such longer period as the Defence Minister allows (either before or after the end of the 30 days).

- (4) The request must set out the reasons why it is made.

*Internal review by Defence Minister personally*

- (5) On receiving the request, the Defence Minister must review the decision personally.
- (6) The Defence Minister may:
  - (a) affirm, vary or set aside the decision; and
  - (b) if he or she sets aside the decision, make such other decision under regulation 13E or 13EC as he or she thinks appropriate.
- (7) The Defence Minister must give the person written notice including all of the following:
  - (a) the Defence Minister's decision under subregulation (6);
  - (b) the reasons for that decision;
  - (c) a statement of the person's right to have that decision reviewed by the Administrative Appeals Tribunal.
- (8) Failure to give notice in accordance with subregulation (7) does not affect the validity of the Defence Minister's decision.
- (9) The Defence Minister is taken to have affirmed the reviewable defence and strategic goods decision under subregulation (6) if the person does not receive notice of the Defence Minister's decision on review within 90 days after the person requested the Defence Minister to review the reviewable defence and strategic goods decision.

Note: See regulation 13EG for how notices must be given, and when they are taken to be received.

### **13EF Review by the Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal for review of:

- (a) a reviewable defence and strategic goods decision made by the Defence Minister personally; or
- (b) a decision of the Defence Minister under subregulation 13EE(6) (which deals with internal review).

### **13EG Notification of decisions—service and receipt**

*Scope*

- (1) This regulation sets out:
  - (a) methods for giving a notice to a person under this Division; and
  - (b) the time at which a person is taken to have received a notice given under this Division.

*Given personally*

- (2) The notice may be given to the person:
  - (a) at the last address notified to the Defence Minister for the purpose of receiving notices; and
  - (b) by a person authorised by the Defence Minister for the purposes of this subregulation; and
  - (c) either:
    - (i) by giving it directly to the person; or
    - (ii) by giving it to another person who appears to work at that address in a management or executive position.
- (3) The person is taken to have received the notice under subregulation (2) at the time it is given under paragraph (2)(c).

*Sent by mail*

- (4) The notice may be posted to the person at the postal address last notified to the Defence Minister for the purpose of receiving notices.
- (5) The person is taken to have received the notice under subregulation (4):
  - (a) if the notice was posted from a place in Australia to an address in Australia—7 business days after the date of the notice, in the place of the address to which it was sent; or
  - (b) if paragraph (a) does not apply—21 days after the date of the notice.

*Electronic notice*

- (6) If the person has notified to the Defence Minister an email address, fax number or other electronic address, for the purpose of receiving notices, the notice may be:
  - (a) faxed to the person at the fax number last notified to the Defence Minister for that purpose; or
  - (b) sent to the person at the email address last notified to the Defence Minister for that purpose; or
  - (c) sent to the person by any other electronic means to the electronic address last notified to the Defence Minister for that purpose.
- (7) The person is taken to have received the notice under subregulation (6) at the end of the day (in the person's location) that it was sent or, if that day is not a business day, at the end of the next business day.

### **13EH Disclosure of reasons for decisions**

*Scope*

- (1) This regulation applies in relation to a notice of a decision under this Division if this Division provides that reasons for the decision must be stated in the notice.

*Decisions made by the Minister personally*

- (2) If the decision is made by the Defence Minister personally, the notice of the decision must not disclose any reasons whose disclosure the Defence Minister

believes would prejudice the security, defence or international relations of Australia.

*Decisions made by a delegate*

- (3) If the decision is made by a delegate of the Defence Minister, and the delegate believes that the disclosure of some or all of the reasons would prejudice the security, defence or international relations of Australia:
- (a) the delegate must refer the particular case to the Defence Minister; and
  - (b) if the Defence Minister believes that the disclosure of some or all of the reasons would prejudice the security, defence or international relations of Australia:
    - (i) the Defence Minister must inform the delegate of those reasons; and
    - (ii) the notice of the decision must not disclose those reasons.

*Notification that reasons have not been disclosed*

- (4) If reasons are not disclosed in the notice because of subregulation (2) or (3), that fact must be stated in the notice.

### **13EI Disclosure of information and documents**

- (1) The Secretary of the Department administered by the Defence Minister (the **Secretary**) may disclose any information, or give any document, obtained or generated for the purposes of this Division, to any of the following for a purpose connected with the administration of this Division (including the performance of a function, or the exercise of a power, under this Division):
- (a) a Minister of the Commonwealth, a State or a Territory;
  - (b) the head (however described) of a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*;
  - (c) a State or Territory, or an authority of a State or Territory;
  - (d) any of the following:
    - (i) the government of a foreign country, or of part of a foreign country;
    - (ii) an authority of the government of a foreign country;
    - (iii) an authority of the government of part of a foreign country;
  - (e) a person or entity specified in an instrument under subregulation (2).
- (2) The Defence Minister may, by legislative instrument, specify a person or entity for the purposes of paragraph (1)(e).
- (3) The Secretary may disclose information under subregulation (1) only if the Secretary is satisfied that the recipient of the information will not disclose the information to anyone else without the Secretary's consent.
- (4) The Secretary may give a document under subregulation (1) only if the Secretary is satisfied that the recipient of the document will not disclose any of the contents of the document to anyone else without the Secretary's consent.

*Relationship with other laws*

- (5) Subregulation (1) applies despite:
- (a) a law of the Commonwealth other than an Act or this regulation; and

- (b) a law of a State or a Territory.

### 13EJ Delegations by Defence Minister

- (1) The Defence Minister may delegate the powers covered by subregulation (2) to:
- (a) the Secretary of the Department administered by that Minister; or
  - (b) an SES employee, or acting SES employee, in that Department; or
  - (c) an APS employee who holds, or is acting in, an Executive Level 1 position, or an equivalent or higher position, in that Department.

Note 1: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Note 2: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) This subregulation covers the following powers:
- (a) the power under regulation 13E to grant permission to export goods listed in Part 1 or Part 2 of the defence and strategic goods list, or goods containing DSGL technology;
  - (b) the power to request additional information under subregulation 13EB(4), and to defer consideration of an application under subregulation 13EB(5);
  - (c) the power to approve a form under subregulation 13EB(6);
  - (d) the power to impose, remove or vary conditions under regulation 13EC in relation to such a permission.
- (3) The Defence Minister may delegate to an officer of Customs the power under regulation 13E to grant permission to export goods listed in Part 1 of the defence and strategic goods list.
- (4) The Defence Minister must not delegate to any person the following powers:
- (a) the power under subregulation 13E(3) to refuse to grant a permission;
  - (b) the power under subregulation 13ED(1) to revoke a permission.
- (5) In performing functions or exercising powers under a delegation under this regulation, the delegate must comply with any directions of the Defence Minister.

### 13EK Delegations by Secretary

The Secretary of the Department administered by the Defence Minister may delegate any of the Secretary's powers under regulation 13EI (which relate to the disclosure of information and documents) to:

- (a) an SES employee, or acting SES employee, in that Department; or
- (b) an APS employee who holds, or is acting in, an Executive Level 1 position, or an equivalent or higher position, in that Department.

Note 1: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Note 2: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

## Division 4B—Environmental goods

### 5 Subregulation 13H(1)

Repeal the subregulation, substitute:

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- (1) This regulation applies to an application for a permission under subregulation 9(3) or 13G(1) to export goods.

## **6 Subregulations 13H(1A) and (2)**

Omit “licence or”.

## **7 Subregulation 13H(3)**

Repeal the subregulation, substitute:

- (3) This regulation does not affect the power of the relevant Minister or an authorised person to grant a permission under subregulation 9(3) subject to conditions or requirements.

## **8 Paragraph 13H(4)(a)**

Repeal the paragraph.

## **9 Paragraph 13H(4)(b)**

Omit “Resources;”, substitute “Resources; or”.

## **10 Subregulation 13H(5)**

Omit “(1)”, substitute “(1A)”.

## **11 After regulation 14**

Insert:

## **Part 5—Transitional matters**

## **12 After regulation 17**

Insert:

## **18 Amendments made by the *Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018***

### *Licences and permissions*

- (1) A licence or permission granted under regulation 13E that was in force immediately before the day (the **commencement day**) on which Schedule 1 to the *Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018* (the **amending regulations**) commences continues to have effect, on and after that day, as if it were a permission granted under regulation 13E as substituted by the amending regulations.

Note 1: Permissions granted under regulation 13E relate to the export of defence and strategic goods.

Note 2: See also item 4 of Schedule 1 to the *Customs and Other Legislation Amendment Act 2017*, which relates to paragraph 13ED(1)(b) of these Regulations (Minister’s power to revoke a permission for national security etc. reasons) as inserted by the amending regulations.

- (2) If Schedule 1 to the amending regulations amends a reference in another instrument to a licence or permission granted under regulation 13E of these

Regulations so that the instrument only refers to a permission granted under regulation 13E, the reference to a permission, on and after the commencement day, includes a reference to a licence granted under regulation 13E before the commencement day.

- (3) These Regulations apply, on and after the commencement day, in relation to an application for a permission under regulation 13E that had been made, but not decided, immediately before that day as if it were an application for a permission under regulation 13E as substituted by Schedule 1 to the amending regulations.
- (4) Despite anything else in this regulation, the amendments made by Schedule 1 to the amending regulations (other than the amendment to insert this regulation) do not apply in relation to an application for a permission under regulation 13E (as in force before the commencement day) if:
  - (a) the application had been made, but not decided, immediately before the commencement day; and
  - (b) the application had been referred to the Defence Minister under regulation 13H before that day.

*Authorised persons*

- (5) These Regulations, as amended by Schedule 1 to the amending regulations, have effect on and after the commencement day as if an authority given to a person employed in the Department of Defence by the Defence Minister under subregulation 13E(1A) that was in force immediately before the commencement day were a delegation by the Defence Minister to that person for the purposes of subregulation 13EJ(1) of these Regulations as so amended.
- (6) These Regulations, as amended by Schedule 1 to the amending regulations, have effect on and after the commencement day as if an authority given to an officer of Customs by the Defence Minister under subregulation 13E(1A) that was in force immediately before the commencement day were a delegation by the Defence Minister to that officer for the purposes of subregulation 13EJ(3) of these Regulations as so amended.

*Authorised officers*

- (7) These Regulations, as amended by Schedule 1 to the amending regulations, have effect on and after the commencement day as if an authorisation by the CEO of an officer of Customs for the purposes of the definition of **authorised officer** in subregulation 13E(1) that was in force immediately before the commencement day were an authorisation by the Comptroller-General of Customs under subregulation 13EA(4) of these Regulations as amended by the amending regulations for the purposes of paragraph 13EA(2)(c) of these Regulations as so amended.

## **Part 2—Consequential amendments**

### ***Customs (Prohibited Imports) Regulations 1956***

#### **13 Paragraph 3D(b)**

Repeal the paragraph, substitute:

- (b) if the exportation of the goods would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission is produced to a Collector; and

#### **14 Subparagraph 2.2(c)(iv) of Part 1 of Schedule 6**

Repeal the subparagraph, substitute:

- (iv) if the exportation of the ammunition, or the component of ammunition, after its importation would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted; or

#### **15 Subparagraph 2.2(d)(iv) of Part 1 of Schedule 6**

Repeal the subparagraph, substitute:

- (iv) if the exportation of the article after such repair, modification, testing or use has been carried out would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted; or

#### **16 Subparagraph 2.2(f)(v) of Part 1 of Schedule 6**

Repeal the subparagraph, substitute:

- (v) if the exportation of the article after the close of the sanctioned activity would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted; or

#### **17 Subparagraph 2.2(g)(v) of Part 1 of Schedule 6**

Repeal the subparagraph, substitute:

- (v) if the exportation of the article after its use in such research or development would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted;

#### **18 Subparagraph 8.2(a)(i) of Part 1 of Schedule 6**

Repeal the subparagraph, substitute:

- (i) the article has previously been exported, and is not currently in Australia; and
- (ia) if the most recent exportation of the article would have been prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—that exportation was in accordance with a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*; and

**19 Subparagraph 8.2(a)(iii) of Part 1 of Schedule 6**

Omit “the export”, substitute “its most recent exportation”.

**20 Subparagraphs 8.2(b)(i) and (ii) of Part 1 of Schedule 6**

Repeal the subparagraphs, substitute:

- (i) the article is currently in Australia; and
- (ii) if the exportation of the article would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission is in force, and the article has not been modified since the permission was granted; and

**21 Paragraphs 1.3(a) and (b) of Part 3 of Schedule 6**

Repeal the paragraphs, substitute:

- (a) if the exportation of the firearm would have been prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission; or
- (b) in any other case—written evidence that the firearm had previously been lawfully exported from Australia by the importer.

**22 Subparagraph 2.2(b)(iv) of Part 1 of Schedule 13**

Repeal the subparagraph, substitute:

- (iv) if the exportation of the ammunition, or the component of ammunition, after its importation would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted; or

**23 Subparagraph 2.2(c)(iv) of Part 1 of Schedule 13**

Repeal the subparagraph, substitute:

- (iv) if the exportation of the good after such repair, modification, testing or use has been carried out would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted; or

**24 Subparagraph 2.2(e)(v) of Part 1 of Schedule 13**

Repeal the subparagraph, substitute:

- (v) if the exportation of the good after the close of the sanctioned activity would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission

has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted; or

**25 Subparagraph 2.2(f)(v) of Part 1 of Schedule 13**

Repeal the subparagraph, substitute:

- (v) if the exportation of the good after its use in such research or development would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission has been granted, or a person who may grant such a permission has stated, in writing, that such a permission will be granted;

**26 Subparagraphs 5.2(a)(i) and (ii) of Part 1 of Schedule 13**

Repeal the subparagraphs, substitute:

- (i) the good has previously been exported, and is not currently in Australia; and
- (ii) the most recent exportation of the good was in accordance with a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*, or the importer has provided written evidence that its most recent exportation was lawful; and

**27 Subparagraph 5.2(a)(iv) of Part 1 of Schedule 13**

Omit “the export”, substitute “its most recent exportation”.

**28 Subparagraph 5.2(b)(i) of Part 1 of Schedule 13**

Repeal the subparagraph, substitute:

- (i) the good is currently in Australia; and
- (ia) if the exportation of the good would be prohibited without a permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*—such a permission is in force, and the good has not been modified since the permission was granted; and

***Defence Trade Controls Regulation 2013***

**29 Section 6 (heading)**

Repeal the heading, substitute:

**6 Exception to offence—permission to export DSGL technology**

**30 Paragraphs 6(b), (c) and (d)**

Omit “licence or”.

## **Part 3—Amendments of listed provisions**

### ***Customs (Prohibited Exports) Regulations 1958***

#### **31 Amendments of listed provisions—references to the defence and strategic goods list**

Omit “mentioned in regulation 13E” in the following provisions:

- (a) subregulation 13CI(2);
- (b) subregulation 13CK(2);
- (c) subregulation 13CL(2);
- (d) subregulation 13CM(2);
- (e) subregulation 13CN(2) (table item 1);
- (f) paragraph 13CO(2)(a);
- (g) subregulation 13CP(2).