

## EXPLANATORY STATEMENT

### Issued by the Authority of the Minister for Defence

#### *Customs Act 1901 Defence and Strategic Goods List 2021*

The *Defence and Strategic Goods List 2021* (DSGL) is the document formulated and published under paragraph 112(2A)(aa) of the *Customs Act 1901* by the Minister for Defence, as defined in regulation 2 of the *Customs (Prohibited Exports) Regulations 1958*. The DSGL repeals and replaces the *Defence and Strategic Goods List 2019*.

The DSGL is a legislative instrument for the purposes of the *Legislation Act 2003*, and will commence operation the day after registration.

### Overview and purpose

In many ways, the DSGL is the centrepiece of Australia's export control system. The purpose of the DSGL is to list the military and dual-use goods, software and technologies that are subject to export control regulation in Australia.

The DSGL is used by exporters and suppliers to identify which goods, software and technology are prohibited from being exported, supplied, published, or brokered without a permit first being obtained.

Defence Export Controls (DEC) is responsible for administering Australia's export controls and regulates the following:

- the export of military and dual-use goods, software and technology;
- the supply and publication of DSGL technology; and
- the brokering of goods, software and technology

that are listed in the DSGL.

In accordance with Australia's export control system, DEC grants authorisations to export, supply, publish and broker in the form of permits and approvals. DEC's mission is to ensure Australia exports responsibly. Detailed information on its roles and functions is available on the DEC website: [www.defence.gov.au/ExportControls/](http://www.defence.gov.au/ExportControls/)

The DSGL is updated from time to time to ensure that it remains current. The DSGL was last updated in March 2019.

### Construct of the DSGL

The DSGL is comprised of listed goods, software and technology that are derived from the control lists developed by the multilateral, non-proliferation and export control regimes of which Australia is a participating state.<sup>1</sup> The DSGL includes equipment, assemblies and

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<sup>1</sup> Australia is a participating state of the Wassenaar Arrangement, the Missile Technology Control Regime, the Australia Group and the Nuclear Suppliers Group.

components, associated test, inspection and production equipment, materials, chemicals, software and technology.

The DSGL is divided into two parts:

- Part 1 covers military and related goods – those goods, software and technologies designed or adapted for use by the armed forces or goods that are inherently lethal. These goods include:
  - o Military Goods, being goods, software or technology that are designed or adapted for military purposes, including their parts and accessories; and
  - o Non-Military Lethal Goods, being equipment that is inherently lethal, incapacitating or destructive such as non-military firearms, non-military ammunition and commercial explosives and initiators.
- Part 2 covers those goods that have a dual use. Dual-use goods comprise equipment, software and technologies developed to meet commercial needs but which may be used either as military components or for the development or production of military systems or weapons of mass destruction.

Part 2 is further subdivided into 10 categories:

- o Category 0 – Nuclear Materials;
- o Category 1 – Materials, Chemicals, Micro-organisms and Toxins;
- o Category 2 – Materials Processing;
- o Category 3 – Electronics;
- o Category 4 – Computers;
- o Category 5 – Telecommunications and Information Security;
- o Category 6 – Sensors and Lasers;
- o Category 7 – Navigation and Avionics;
- o Category 8 – Marine; and
- o Category 9 – Aerospace and Propulsion.

### **Updates in the *Defence and Strategic Goods List 2021***

The DSGL contains 209 updates to the *Defence and Strategic Goods List 2019*.<sup>2</sup> The majority of these amendments (170) are clarifications and editorial changes that do not involve a change in the scope of existing controls. The remaining 39 amendments can be categorised as either new controls, deletions of previously existing controls, or modifications to existing controls.

Sixteen are changes which remove or reduce the requirement to obtain an approval prior to export, and 23 of the updates are either new controls or changes to existing controls that result in an expanded scope.

DEC has assessed that overall, the updates will have a limited impact on Australian exporters and researchers. Consultation on these amendments occurred previously at the export control regime proposal stage. Further details on this consultation are set out below.

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<sup>2</sup> This number does not include minor typographical changes.

## Consultation

Between 2018 and 2020 DEC undertook consultation with other participating states of the export control regimes to arrive at proposed amendments to the various control lists. This consultation has been achieved through direct participation in regime technical meetings.

DEC's domestic consultation process began when proposals for control change were submitted to the regimes. This consultation covered both Australia-initiated proposals and proposals by other regime members ('foreign proposals'). DEC's regulatory stakeholder consultation process involved consultation both within government and with industry and academia. DEC maintains a register of interested parties who can be consulted on proposals that impact their interests. DEC also used its own data, data from the Australian Border Force, data from the Australian Research Council, and advice from other Government agencies, to identify potentially impacted exporters and researchers.

DEC identified a number of stakeholders potentially affected by proposals and sought their advice as to how the proposal would impact their business or research.

DEC considered stakeholder responses when formulating Australia's position on each of the regime proposals. This was to strike an appropriate balance between national and global security and the impact on Australian industry and researchers.

## Documents Incorporated by Reference

Several controls in the DSGL refer to internationally recognised testing methods, regulations and standards to define control parameters. These are managed by various international organisations and their use is derived from the control lists of the multilateral non-proliferation and export control regimes. The standards are generally held by the National Library of Australia and are available free-of-charge to members of the public for loan. Alternatively the Standards are available for purchase from the web links below. Where a standard is not freely and readily available at the National Library of Australia, DEC will provide advice regarding the contents of the standard on request.

The documents are incorporated as in force at the time of the commencement of the instrument.

*International Organization for Standardization (ISO)*: This is a network of national standard bodies of which Australia is a member. ISO Standards are available for purchase through the ISO website at [www.iso.org](http://www.iso.org)

*International Telecommunications Union (ITU)*: This is a specialised agency of the United Nations. The ITU Radio Regulations include internationally recognised allocations for the use of different bands of the radio frequency spectrum. The ITU Radio Regulations are available free-of-charge on the ITU website at [www.itu.int/pub/R-REG-RR-2012](http://www.itu.int/pub/R-REG-RR-2012)

*Institute of Electrical and Electronics Engineers (IEEE)*: This is a professional association that has a standards function. IEEE Standards are available for purchase at <https://www.ieee.org/standards/index.html>

*World Health Organisation (WHO) Laboratory Biosafety Manual, 3<sup>rd</sup> edition, Geneva, 2004*: This document is published by the WHO and provides guidance on biosafety techniques for

use in laboratories at all levels. It is available free-of-charge at [http://www.who.int/csr/resources/publications/biosafety/WHO\\_CDS\\_CSR\\_LYO\\_2004\\_11/en/](http://www.who.int/csr/resources/publications/biosafety/WHO_CDS_CSR_LYO_2004_11/en/)

*American National Standards Institute:* This is a US-focused standards system, with standards available for purchase at [www.ansi.org](http://www.ansi.org)

*American Society for Testing and Materials (ASTM) International:* This is an international standards organisation, with standards available for purchase at [www.astm.org](http://www.astm.org)

*American Bearing Manufacturers Association (ABMA):* This organisation publishes standards specific to bearings, with standards available at [www.americanbearings.org](http://www.americanbearings.org)

## **Analysis of the changes in the *Defence and Strategic Goods List 2021***

The amendments do not substantially alter the nature or overall purpose of the DSGL.

The amendments that result in effective changes to the DSGL are discussed below. Minor editorial and clarification changes where the scope of the control has not changed are not discussed here.

### **Definitions**

“Superalloy”: The revised definition of “superalloy” has removed reference to AISI 300 series alloys and replaced it with a stress rupture life specification. The scope is therefore slightly reduced.

*Impact: Slight reduction in scope of controls.*

### **Munitions List**

ML1.a: Additional decontrol section added to decontrol handguns used to slaughter or tranquilise animals. The scope remains unchanged as the ML900 series note decontrols these goods already.

*Impact: None – no scope change*

ML2.a: The term *specifically designed for military use* has been added to this control. This will not change the scope of the control as all such weapons are already considered specifically designed for military use.

*Impact: None – no scope change.*

ML8.a.43: New Controls for TKX-50 (Dihydroxylammonium 5,5'-bistetrazole-1,1'-diolate) explosives, and associated software and technology

*Impact: None – no scope change. Australia already controls TKX-50 under Australia’s unilateral ML900 series of controls.*

ML9.h: New control and notes to control nuclear power generating equipment and propulsion systems in controlled vessels.

*Impact: Will introduce the requirement for approval to be obtained before exporting or brokering these items. In addition, technology and software required for the development, production or use of these items will also require an approval.*

ML10 Note 6: New note to decontrol propulsion engines manufactured prior 1946.

*Impact: Will reduce the requirement for an approval.*

ML21.b.5: New control and new note to control software specifically designed or modified to conduct military offensive cyber operations and associated technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting or brokering this software. In addition, technology and software required for the development, production or use of these items will also require an approval.*

### **Category 0 – Nuclear Materials, Facilities and Equipment**

There have been several minor amendments and restructures to this Category based on a recent review by the Nuclear Supplier Group, however the scope has not changed.

*Impact: None - clarification only.*

### **Category 1 – Materials, Chemicals, Microorganisms and Toxins**

1A002 Note 4: New note added stating specifications for controlled carbon “fibrous or filamentary materials”. This note will decontrol all fibrous and filamentary materials that are 25 mm or less.

*Impact: Will reduce the requirement for an approval.*

1B235: New control and technical note to control equipment specially designed to produce tritium and any associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition, technology and software required for the development, production or use of these items will also require an approval.*

1C010.c: New material requirements added to the control of "fibrous or filamentary materials".

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition, technology and software required for the development, production or use of these items will also require an approval.*

1C350.68-91: The following 24 toxic chemicals have been added to the 1C350 controls. Associated technology will also be controlled:

Methyl dichlorophosphate (CAS 677-24-7)

Ethyl dichlorophosphate (CAS 1498-51-7)

Methyl difluorophosphate (CAS 22382-13-4)

Ethyl difluorophosphate (CAS 460-52-6)

Diethyl chlorophosphite (CAS 589-57-1)

Methyl chlorofluorophosphate (CAS 754-01-8)

Ethyl chlorofluorophosphate (CAS 762-77-6)  
N,N-Dimethylformamide (CAS 44205-42-7)  
N,N-Diethylformamide (CAS 90324-67-7)  
N,N-Dipropylformamide (CAS 48044-20-8)  
N,N-Diisopropylformamide (CAS 857522-08-8)  
N,N-Dimethylacetamide (CAS 2909-14-0)  
N,N-Diethylacetamide (CAS 14277-06-6)  
N,N-Dipropylacetamide (CAS 1339586-99-0)  
N,N-Dimethylpropanamide (CAS 56776-14-8)  
N,N-Diethylpropanamide (CAS 84764-73-8)  
N,N-Dipropylpropanamide (CAS 1341496-89-6)  
N,N-Dimethylbutanamide (CAS 1340437-35-5)  
N,N-Diethylbutanamide (CAS 53510-30-8)  
N,N-Dipropylbutanamide (CAS 1342422-35-8)

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition, technology required for the development, production or use of these items will also require an approval.*

1C351.a.42: New control on the export of Middle East Respiratory Syndrome-related Coronavirus (MERS-CoV) and associated genetic elements. Associated technology will also be controlled.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition, technology required for the development, production or use of these items will also require an approval.*

## **Category 2 – Materials Processing**

2A001: Control expanded to control ISO 492 Tolerance Class 2 ball bearings and solid roller bearings and any associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

2A001.c: Control expanded to control components of controlled active magnetic bearing systems and any associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

### **Category 3 – Electronics**

3A001.b.3.f: Expansion of 3A001.b.3 by adding control of discrete microwave transistors with a peak saturated power output greater than 5 W at frequencies exceeding 8.5 GHz and including 31.8 GHz and any associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

3A002.d.5-6: Expansion of 3A002.d signal generator control to control signal generators that have an RF modulation bandwidth and that fall within specified frequency ranges and any associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

3B001.h: Expansion of 3B001.h control. Previously multi-layered masks were controlled based on their production method. This control now controls multi-layer masks designed to be used by lithography equipment regardless of the production method. Any associated software and technology is also controlled.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

3D005: New control for software specially designed to restore normal operation of microcomputers, "microprocessor microcircuit" or "microcomputer microcircuit" within 1 ms after an electromagnetic pulse (EMP) or electrostatic discharge (ESD) disruption.

*Impact: Will introduce the requirement for approval to be obtained before exporting this software. In addition technology for the development, production or use of these items also requires an approval.*

3E004: New control for technology related to slicing, grinding and polishing silicon wafers to specific specifications.

*Impact: Will introduce the requirement for approval to be obtained before exporting this technology.*



## **Category 4 – Computers**

There is a single minor amendment to this Category as the local definitions of “vulnerability disclosure” and “cyber incident response” changing to a global definition. The scope of affected controls have not changed.

*Impact: None – clarification only.*

## **Category 5 Part 1 – Telecommunications**

5D001.e: New control for software specially designed or modified for monitoring or analysis by law enforcement and associated technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting this software. In addition technology for the development, production or use of these items also requires an approval.*

## **Category 5 Part 2 – Information Security**

5A002 Technical Note 2: Control expanded to capture quantum cryptography algorithms and associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

5A002.a Note 2.f: Decontrol note broadened to include wireless personal area network (WPAN) devices.

*Impact: Will remove the requirement for an approval.*

5A002.a Note 2.h: Decontrol note broadened to include gateways restricted to “Operations, Administration or Maintenance” (“OAM”) tasks.

*Impact: Will remove the requirement for an approval.*

5A002.a Note 2.j: New decontrol entry added for 'connected civil industry application' devices with cryptographic capabilities.

*Impact: Will remove the requirement for an approval.*

5A004.b: New entry added to control forensic tools for computers and communication devices. Associated software and technology will also be controlled.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

### **Category 6 – Sensors and Lasers**

6A001.a.2.a.6: Hydrophone sensitivity parameter added to control.

*Impact: Will remove the requirement for an approval.*

6A003.b.4.b Note 3.b.1: Decontrol scope for Instantaneous-Field-of-View (IFOV) requirement changed from 10 mrad to 2 mrad.

*Impact: Will remove the requirement for an approval.*

6A005 Note 6: New local definition for ‘single transverse mode’ reduces the scope of this laser control by introducing control thresholds.

*Impact: Will remove the requirement for an approval.*

6B002: New control added for masks and reticles specially designed for controlled optical sensors. Associated technology is also controlled.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology required for the development or production of these items also requires an approval.*

### **Category 7 – Navigation and Avionics**

There have been several minor amendments and restructures to this Category based on a recent review by the Wassenaar Arrangement, however the scope of the controls has not changed.

*Impact: None – clarification only.*

### **Category 8 – Marine**

8A002.d: Update of the controls for underwater vision systems. These are now only controlled if they are designed or modified for remote operation with an underwater vehicle, and they employ techniques to minimise backscatter (including range-gated illuminators and laser systems).

*Impact: Will reduce the requirement for an approval.*

## **Category 9 – Aerospace and Propulsion**

9A004: Control expanded to control air-launch platforms and sub-orbital craft and associated software and technology.

*Impact: Will introduce the requirement for approval to be obtained before exporting these items. In addition technology and software required for the development, production or use of these items also requires an approval.*

9B001: Control reduced to limit scope to casting equipment designed for “superalloys”.

*Impact: Will reduce the requirement for an approval.*

9E003.a.7: Technology control relating to gas turbine engine components using diffusion bonding technology removed.

*Impact: Will reduce the requirement for an approval.*

9E003.a.11: Reduction of the technology control relating to fan blades by increasing the technical requirements to meet this control.

*Impact: Will reduce the requirement for an approval.*

### **Sensitive List**

3A001.b.2 and 3A001.b.3: Additional entries to the Sensitive List for monolithic microwave integrated circuit (“MMIC”).

*Impact: Will increase the scrutiny for an approval.*

8A001.d: Control removed from Category 8. This change is reflected in the Sensitive List.

*Impact: None– control removed*

### **Very Sensitive List**

New controls for unmanned submersible vehicles added to the Very Sensitive List.

*Impact: Will increase the scrutiny for an approval.*

8A001.d: Control removed from Category 8. This change is reflected in the Sensitive List.

*Impact: None– control removed*

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### **Defence and Strategic Goods List 2021**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Legislative Instrument repeals and replaces the Defence and Strategic Goods List 2019 (DSGL).

The instrument updates the DSGL so that it aligns with the changes that have been made to the international control lists of the non-proliferation and export control regimes of which Australia is a member.

The update to the DSGL ensures that Australia's regulatory framework for export controls is reflective of international best practice and continues to support the responsible export and supply of defence and dual-use goods and technologies.

The Legislative Instrument does not introduce any amendments that substantially alter the nature or purpose of the DSGL in any way.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Peter Dutton MP, Minister for Defence**