Defence Trade Controls

Guideline

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Administrators AD Research Operations

Academic Secretary

# Intent

#### The intention of the Defence Trade Controls Guideline (this Guideline) is to explain how the Defence Trade Controls Act 2012 (the Act) affect you if your research involves collaboration outside Australia.

#### The Act adds 'intangible' supply to existing export controls for physical goods of advanced know-how on technologies that are listed as usable for military purposes, even if the research is for peaceful purposes.

#### 'Intangible' in this context includes email or provision of information for download, where the recipient is outside of Australia. This page provides information and links to assist researchers to comply with this, and related regulations.

#### This Guideline provides details on how to assess, and if necessary obtain a permit to, undertake research if it is controlled by the Defence Trade Controls Act.

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#### This Guideline is to be read in conjunction with the following —

##### Research Integrity Policy;

##### Autonomous Sanctions Guideline.

# What topics and technologies are controlled?

#### The Defence and Strategic Goods List (DSGL) available online at —

#### <https://www.legislation.gov.au/Details/F2019L00424>

#### includes several types of technology that are an important part of University research.  If you are collaborating with people outside of Australia on military technology, or any of the following, please examine the material on our [Defence Trade Controls web page](https://www.research.uwa.edu.au/staff/DTC) in the context of your work —

##### Nuclear materials;

##### Materials Processing (this includes biological material such as some viruses, bacteria, fungi and toxins);

##### Electronics;

##### Computers;

##### Telecommunications and Information Security;

##### Sensors and Lasers;

##### Navigation and Avionics;

##### Marine;

##### Materials, Chemicals, Micro-organisms and Toxins; and

##### Aerospace and Propulsion.

#### Specific topics within each of the general areas listed above appear in the DSGL. The list itself, can be on the Federal Register of Legislation at —

#### <https://www.legislation.gov.au/Details/F2019L00424>

#### The Customs (Prohibited Export) Regulations 1958 applies to physical shipment (for example, physical hardware and equipment, hard copy files, CD, USB drive and laptop) of everything in the DSGL. Such shipment requires a permit. 'Intangible' supply (for example by email or internet file transfer) of anything in Part 1 (Munitions) of the DSGL also requires a permit.

#### 'Intangible' supply of Part 2 (Dual-use) DSGL technologies may require a permit under the Act.

#### Defence Export Control (DEC) at the Australian Department of Defence provides a search tool for the DSGL at —

#### <https://dsgl.defence.gov.au/Pages/Home.aspx>

# Exemptions

#### There are some exemptions, but they are very specific, so it is important to understand if a given exemption does or does not apply to your research.

#### The exact terms of the exemptions are defined in the regulation (in the Definition of Terms section for the DSGL —

#### <https://www.legislation.gov.au/Details/F2019L00424>

#### If there is any doubt, please contact the support team in the Office of Research (OoR) -.

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#### The following types of research collaborations are exempt from the provisions of the Defence Trade Controls regulation —

##### exemption for basic scientific research —

###### Basic scientific research means: "... experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective."

##### exemption for work in the public domain —

###### In the public domain means: "... technology or software which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove "technology" or "software" from being "in the public domain").

##### exemption for medical equipment —

###### The controls in the dual-use list (Part 2 of the DSGL) are not intended to subject medical equipment to export controls. There is a 'General Note on Medical equipment' in Division 3 of the DSGL as follows —

###### “Equipment specially designed for medical end‑use that incorporates an item controlled in the Dual‑Use List is not controlled. This means that medical equipment is by definition exempt from export control, regardless of what controlled dual-use goods are inside it. This exemption does not apply to medical equipment incorporating equipment from the munitions list (Part 1 of the DSGL)”.

##### exemption for publication —

###### A person does not need approval to publish dual‐use DSGL technology.  However, the Minister for Defence may issue a notice prohibiting a person from publishing dual‐use DSGL technology if the publication would prejudice Australia’s security, or international obligations.  As outlined in the Explanatory Memorandum, the Minister for Defence would consult with the Minister responsible for research when considering whether to prohibit a publication. It is an offence for any person to knowingly contravene such a notice.

## Difference between Supply and Publication

#### To determine whether the activity is a supply or a publication under the Act, a person should ask: Will the DSGL technology be made available 'in the public domain'?

#### If the DSGL technology is published by placing it 'in the public domain', even if it can only be accessed by a payment, it will be a publication. This includes websites available to the public and journals which permit anyone to subscribe.

#### If access to the DSGL technology is controlled or restricted to particular users or groups, for example those with a security clearance, it has not been placed 'in the public domain' and it will be a 'supply'. This includes closed conference websites where only members from a select organisation(s) or group can access the conference papers. A conference without published papers (proceedings) would not be publication as there is no resulting publication (e.g. on the web or in a journal) ‘in the public domain’ for people to access.

#### Defence Export Controls (DEC) at the Australian Department of Defence provides a self-assessment "Activity Questionnaire" to assist researchers identify if these exemptions apply to a specific activity at

#### <https://dsgl.defence.gov.au/Pages/Home.aspx>

# Defence Trade Controls vs Autonomous Sanctions

#### A different but overlapping area of Commonwealth regulation is Autonomous Sanctions.

#### Sanctions are measures not involving the use of armed force that are imposed in situations of international concern, including the grave repression of human rights, the proliferation of weapons of mass destruction or their means of delivery, or armed conflict.

#### They impose restrictions on activities that relate to particular countries, goods and services, or persons and entities.

#### Australian sanction laws implement United Nations Security Council (UNSC) sanctions regimes and Australian autonomous sanctions regimes. Refer to the Autonomous Sanctions Guideline for more information.

#### Administration of sanctions at the University is explained here —

#### <https://www.research.uwa.edu.au/staff/sanctions>

# UWA support for DTC controls

#### Obtaining the relevant permissions from the Commonwealth Department of Defence (DoD) can make it possible for you to collaborate internationally on research in these areas.

#### Contact OoR for local support with Defence Trade Controls and to coordinate a DoD permit if one is needed —

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