

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Defence

*Defence Trade Controls Act 2012*

### ***Defence Trade Controls (Excluded DSGL goods and DSGL technology) Determination 2024***

The *Defence Trade Controls (Excluded DSGL goods and DSGL technology) Determination 2024* (the instrument) is made under subsection 5C(3) of the *Defence Trade Controls Act 2012* (the Act). The instrument commences on 1 September 2024 and is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

The instrument comprises a list of Defence and Strategic Goods List (DSGL) goods and DSGL technology that are not covered by the exemptions in subsections 5C(1A), 5C(1B), 5C(1C), 5C(2A) and 5C(2B) of the DTC Act. Those provisions set out exemptions from the requirement to hold a permit authorising the supply of DSGL goods or DSGL technology, or the provision of DSGL services. The DSGL goods and DSGL technology specified in the instrument are excluded from the scope of these exemptions.

The effect of DSGL goods or DSGL technology being specified in the instrument is that exports, supplies or the provision of DSGL services relating to these DSGL goods or DSGL technology will require a licence or permission issued under the Act or the *Customs (Prohibited Exports) Regulations 1958* respectively. The intent of the instrument is to ensure the protection and non-proliferation of sensitive defence goods and technology in line with the policies and legislation of Australia, the UK and the US, and the multilateral export control regimes of which all three countries are members. For example, goods or technologies that could be used to develop nuclear weapons are listed on the instrument in order for Australia, the UK and the US to implement guidelines as Participating Governments in the Nuclear Suppliers Group. Likewise, goods and technologies that could be used to create chemical or biological weapons are included in the instrument because all three countries are members of the Australia Group.

#### ***Details of the instrument***

Details of the instrument are set out in **Attachment A**.

#### ***Consultation***

Between 6 - 21 May 2024, Australian, US and UK officials undertook trilateral industry and higher education and research sector engagement to consult industrial bases in all three countries on the licence free environment, including the proposed content of the instrument.

A full Impact Analysis was prepared as part of the *Defence Trade Controls Amendment Act 2024*, which broadly considered the measures being progressed as part of this instrument (OIA23-05246). The full Impact Analysis is available at <https://www.defence.gov.au/about/reviews-inquiries/defence-trade-controls-amendment-bill-2023>.

The Office of Impact Analysis was also consulted in relation to this instrument (OIA24-07859).

***Parliamentary scrutiny***

The instrument is subject to disallowance under section 42 of the Legislation Act. The 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*. A Statement of Compatibility with Human Rights is included at **Attachment B**.

The instrument is made by the Honourable Richard Marles MP, Minister for Defence, in accordance with the requirements of subsection 5C(3) of the Act.

**Details of the *Defence Trade Controls (Excluded DSGL goods and DSGL technology) Determination 2024***

**Section 1      Name**

1. Section 1 provides that the name of the instrument is the *Defence Trade Controls (Excluded DSGL goods or DSGL technology) Determination 2024* (the instrument).

**Section 2      Commencement**

2. Section 2 provides that the instrument commences on 1 September 2024.

**Section 3      Authority**

3. Section 3 provides that the instrument is made under subsection 5C(3) of the *Defence Trade Controls Act 2012*.

**Section 4      Definitions**

4. Section 4 provides the meaning for key terms used throughout the instrument. These comprise:
  - a. **Act** means the *Defence Trade Controls Act 2012*.
  - b. **Activities** means handling, controlling, activating, powering with one-time operational output, launching, laying, sweeping, discharging, decoying, jamming, detonating, disrupting, detecting or disposing.
  - c. **Classified** means information that is security classified.
  - d. **DSGL Reference Number** means the item number in Part 1—Munitions list or Part 2—Dual use list of the *Defence and Strategic Goods List* (DSGL) that covers the DSGL goods or DSGL technology. Each DSGL good or DSGL technology falls into a specific category within the DSGL Munitions list or Dual use list. The purpose of the DSGL Reference Number is to identify that category.
  - e. **Hot section** means combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled intermediate pressure turbine blades, vanes, disks and related cooled structures; cooled low pressure turbine blades, vanes, disks and related cooled structures; cooled shaft-driving power turbine blades, vanes, disks and related cooled structures; cooled augmenters; and cooled nozzles.
5. A note to this section provides that a number of expressions used in this instrument are defined in the Act, including terms like ‘Defence and Strategic Goods List’, ‘DSGL goods’ and ‘DSGL technology’.
6. For defined terms that are not defined in this instrument, please see the Defence and Strategic Goods List.

## **Section 5 Excluded DSGL goods or DSGL technology**

7. Section 5 provides that DSGL goods or DSGL technology specified in an item of column 3 of the table in Schedule 1 that are covered by the DSGL Reference Number in column 2 are excluded for the purposes of subsections 5C(1A), 5C(1B), 5C(1C), 5C(2A) and 5C(2B) of the *Defence Trade Controls Act 2012* (the Act). The effect of section 5 is that the DSGL goods or DSGL technology listed in Schedule 1 of the instrument are not within the scope of the exemptions set out in section 5C of the Act. These exemptions, which set out circumstances where a permit is not be required to authorise a supply of DSGL goods or DSGL technology, or provide DSGL services in relation to those goods or technology, cover:
- a. supplies of DSGL goods or DSGL technology to Australia, the United Kingdom (UK) and the United States (US) (subsection 5C(1A));
  - b. supplies of DSGL goods or DSGL technology made in accordance with a government agreement or arrangement (subsection 5C(1B));
  - c. supplies of DSGL technology within Australia to people, bodies corporates and government entities from countries listed on an instrument made under subsection 15(4A) of the Act (subsection 5C(1C));
  - d. the provision of DSGL services to people, bodies corporates and government entities from Five Eyes countries (Canada, New Zealand, UK and the US) (subsection 5C(2A)); and
  - e. the provision of DSGL services made in accordance with a government agreement or arrangement (subsection 5C(2B)).
8. Additionally, DSGL goods listed in Schedule 1 are not within the scope of the exception set out in sub-regulation 13EA(5A) of the *Customs (Prohibited Exports) Regulations 1958* (Customs PE Regulations), which covers the export of DSGL goods or goods containing DSGL technology to Australia, the UK and the US without a permission. The cumulative effect of DSGL goods and DSGL technology being specified in Schedule 1 of the instrument is that they cannot be exported or supplied, or have DSGL services provided in relation to them, without the export, supply or provision of services being authorised by a permit issued under section 11 of the Act or regulation 13EB of the Customs PE Regulations. The Act provides a limited number of offence-specific defences in circumstances where a supply or provision of DSGL services related to these specified DSGL goods or DSGL technology occurs without being authorised by a permit.

## **Schedule 1 Excluded DSGL goods or DSGL technology**

9. Schedule 1 sets out a table containing the DSGL goods or DSGL technology that are specified to be excluded for the purposes of subsections 5C(1A), 5C(1B), 5C(1C), 5C(2A) and 5C(2B) of the Act.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### ***Defence Trade Controls (Excluded DSGL goods and DSGL technology) Determination 2024***

This Disallowable 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 Instrument**

This instrument comprises a list of Defence and Strategic Goods List (DSGL) goods and DSGL technology that are not covered by the exemptions to the permitting requirements in subsections 5C(1A), 5C(1B), 5C(1C), 5C(2A) and 5C(2B) of the *Defence Trade Controls Act 2012* (DTC Act). The DSGL goods and DSGL technology specified in the instrument are excluded from the scope of these exemptions for two reasons:

- the items are exempted by statute under United States law due to their importance to the national security and foreign policy interests of the United States; or
- the items are specifically exempted by the United Kingdom, Australia or the United States.

The effect of DSGL goods or DSGL technology being specified in the instrument is that exports, supplies or the provision of DSGL services relating to these DSGL goods or DSGL technology will require a licence or permission issued under the DTC Act or the *Customs (Prohibited Exports) Regulations 1958* (Customs PE Regulations) respectively. The intent of the instrument is to ensure the protection and non-proliferation of sensitive defence goods and technologies in line with the policies and legislation of Australia, the United Kingdom and the United States of America, and the multilateral export control regimes to which all three countries are members.

#### **Human rights implications**

This disallowable legislative instrument does not engage any of the applicable rights or freedoms. The purpose of the instrument is to exclude specified DSGL goods and DSGL technology from the coverage of the exemptions set out in section 5C of the DTC Act, which allow for supplies and the provision of DSGL services without a permit. The effect of the instrument is that exports, supplies and the provision of DSGL services in relation to the specified DSGL goods or DSGL technology must be authorised by a permit issued under section 11 of the DTC Act or a permission issued under regulation 13EB of the Customs PE Regulations. The reason these DSGL goods and DSGL technology cannot be transferred without a permit is to ensure their protection and non-proliferation, due to their sensitivity. A person can still apply for a permit or permission to validly authorise the export or supply of these DSGL goods or DSGL technology, or to provide DSGL services in connection with them, and is required to be provided with notice and reasons in the circumstances where such an application is refused.

## **Conclusion**

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.