

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Defence Trade Controls Bill 2011

No. , 2011

(Defence)

**A Bill for an Act to regulate dealings in certain
goods, services and technologies, and for related
purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Simplified outline	3
4 Definitions	3
5 US Defence Articles	7
6 Crown to be bound	8
7 Extension to external Territories	8
8 Extension to things outside Australia	8
9 Severability—additional effect of Act	8
Part 2—Dealings in items in the Defence and Strategic Goods List	10
Division 1—Primary offences	10
10 Offences—supplies and provision of defence services in relation to the Defence and Strategic Goods List	10
11 Permits for purposes of section 10.....	13
12 Changing permit conditions.....	15
13 Breaching permit conditions.....	16
14 Notice prohibiting activities	16
Division 2—Brokering offences	19
15 Offence—arranging supplies and provision of defence services in relation to the Defence and Strategic Goods List.....	19
16 Permits for purposes of section 15.....	21
17 Changing permit conditions.....	23
18 Breaching permit conditions.....	23
Division 3—Registered brokers	25
19 Applying to be a registered broker	25
20 Registering brokers.....	25
21 Renewing registration.....	27
22 Changing registration conditions	29
23 Cancelling the registration of a broker.....	30
24 Register of Brokers.....	31
25 Extended meaning of conviction	31
Part 3—Defense Trade Cooperation Treaty	32
Division 1—Preliminary	32
26 Simplified outline	32

Division 2—Membership of the Australian Community	33
27 Approval of bodies corporate as members of the Australian Community	33
28 Approval conditions	35
29 Suspending an approval	38
30 Cancelling an approval	39
Division 3—Main offences	41
31 US Defence Articles listed in the Defense Trade Cooperation Munitions List	41
32 US Defence Articles exempt from the scope of the Defense Trade Cooperation Treaty	47
Division 4—Ministerial directions	51
33 Ministerial directions—avoiding prejudice to the security, defence or international relations of Australia	51
34 Ministerial directions—suspension or cancellation of approvals	53
Division 5—Other matters	55
35 Transition to the Defense Trade Cooperation Treaty	55
36 Defense Trade Cooperation Munitions List	56
Part 4—Monitoring powers	57
Division 1—Preliminary	57
37 Simplified outline	57
38 No limit on section 71	57
Division 2—Appointment of authorised officers and issue of identity cards	58
39 Appointment of authorised officers	58
40 Identity cards	58
Division 3—Powers of authorised officers	60
41 Authorised officer may enter premises	60
42 Monitoring powers of authorised officers	60
43 Authorised officer may require person to answer questions or produce documents	62
44 Self-incrimination	63
Division 4—Obligations of authorised officers	64
45 Announcement before entry	64
46 Occupier to be informed of rights and responsibilities	64
Division 5—Occupier’s rights and responsibilities	65
47 Occupier entitled to observe search	65

48	Occupier to provide authorised officer with facilities and assistance.....	65
Division 6—Other matters		66
49	Tampering etc. with things secured	66
50	Persons assisting authorised officers	66
51	Compensation for damage to electronic equipment.....	67
Part 5—Information-gathering powers		68
52	Secretary may obtain information and documents.....	68
53	Copying documents—compensation	69
54	Secretary may inspect and copy original documents	69
55	Secretary may retain copies of documents.....	69
56	Secretary may retain original documents.....	69
57	Self-incrimination.....	70
Part 6—Record-keeping		71
58	Making and retaining records	71
59	Production of records	72
60	Secretary may inspect and copy records.....	73
61	Secretary may retain records	73
62	Self-incrimination.....	73
Part 7—Review of decisions		75
63	Reviewable decisions	75
64	Internal review by Minister of reviewable decisions	76
65	Review by the Administrative Appeals Tribunal.....	77
Part 8—Other matters		78
66	Applications under Part 2 or 3.....	78
67	Notices, permits and approvals under this Act	78
68	Disclosure of reasons for decisions	79
69	Disclosure of information and documents	80
70	Injunctions.....	81
71	Forfeiture.....	83
72	Evidential certificates by Minister.....	84
73	Delegation by Minister	85
74	Delegation by Secretary.....	86
75	Regulations.....	87

1 **A Bill for an Act to regulate dealings in certain**
2 **goods, services and technologies, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Defence Trade Controls Act 2011*.

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Sections 3 to 75	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day on which the Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation done at Sydney on 5 September 2007 enters into force.	
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However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.

The Minister must announce by notice in the *Gazette* the day on which the Treaty enters into force.

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

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

3 Simplified outline

The following is a simplified outline of this Act:

- This Act regulates dealings in items listed in the Defence and Strategic Goods List (the *DSGL*) and in items covered by the Defense Trade Cooperation Treaty between Australia and the United States of America.
- Part 2 creates offences for persons who:
 - (a) engage in dealings relating to goods or technology listed in the DSGL; or
 - (b) arrange for other persons to engage in dealings relating to goods or technology listed in the DSGL.
- Part 3 contains provisions implementing the Defense Trade Cooperation Treaty between Australia and the United States of America.
- Part 4 deals with monitoring compliance with Parts 3 and 6.
- Part 5 contains information-gathering powers.
- Part 6 deals with record-keeping obligations.
- Part 7 deals with review of decisions.
- Part 8 deals with various other matters (such as injunctions, forfeiture of things and delegations).

4 Definitions

(1) In this Act:

Article 3(1) US Defence Article has the meaning given by section 5.

Note: See also section 35 (about transition to the Defense Trade Cooperation Treaty).

Section 4

1 **Article 3(3) US Defence Article** has the meaning given by
2 section 5.

3 Note: See also section 35 (about transition to the Defense Trade Cooperation
4 Treaty).

5 **Australia**, when used in a geographical sense, includes the external
6 Territories.

7 **Australian Community facility** means a facility covered by Article
8 4(1)(a) of the Defense Trade Cooperation Treaty.

9 **Australian Community member** means:

- 10 (a) a body corporate that holds an approval under section 27; or
11 (b) a person covered by Article 4(1)(b) of the Defense Trade
12 Cooperation Treaty; or
13 (c) a person:
14 (i) who is employed, or is engaged under a contract for
15 services, by a body corporate that holds an approval
16 under section 27; and
17 (ii) who satisfies the requirements prescribed by the
18 regulations for the purposes of this subparagraph.

19 **Australian person** means:

- 20 (a) the Commonwealth, a State or a Territory or an authority of
21 the Commonwealth, a State or a Territory; or
22 (b) an individual who is an Australian citizen; or
23 (c) an individual who is, within the meaning of the *Migration*
24 *Act 1958*, the holder of a permanent visa; or
25 (d) a body corporate incorporated by or under a law of the
26 Commonwealth or of a State or Territory.

27 **authorised officer** means a person appointed as an authorised
28 officer under section 39.

29 **Defence and Strategic Goods List** means the document:

- 30 (a) formulated by the Minister, and published, as mentioned in
31 paragraph 112(2A)(aa) of the *Customs Act 1901*; and
32 (b) known as the Defence and Strategic Goods List;
33 as amended by the Minister and in force from time to time.

1 **defence services**, in relation to goods or in relation to technology
2 relating to goods, means the giving of assistance (including
3 training) in relation to the design, development, engineering,
4 manufacture, production, assembly, testing, repair, maintenance,
5 modification, operation, demilitarisation, destruction, processing or
6 use of the goods or technology.

7 **Defense Trade Cooperation Munitions List** means the document
8 made under section 36, as amended by the Minister and in force
9 from time to time.

10 **Defense Trade Cooperation Treaty** means the Treaty between the
11 Government of Australia and the Government of the United States
12 of America concerning Defense Trade Cooperation done at Sydney
13 on 5 September 2007, as amended from time to time.

14 Note: In 2011, the text of the Treaty was accessible through the Australian
15 Treaties Library on the AustLII website (www.austlii.edu.au).

16 **foreign person** means a person who is not an Australian person.

17 **goods** has the same meaning as in the *Customs Act 1901*.

18 **Implementing Arrangements** means the Implementing
19 Arrangements (having effect from time to time) referred to in
20 Article 14 of the Defense Trade Cooperation Treaty.

21 Note: In 2011, the text of the Implementing Arrangements was accessible
22 through the Australian Treaties Library on the AustLII website
23 (www.austlii.edu.au).

24 **incorporated goods** has the meaning given by section 5.

25 **manager** of a body corporate means an individual who makes, or
26 participates in making, decisions that affect the whole, or a
27 substantial part, of the body's affairs.

28 **member of the United States Community** means a person or body
29 covered by Article 5(1) or (2) of the Defense Trade Cooperation
30 Treaty.

31 **monitoring powers** has the meaning given by section 42.

32 **offence against this Act** includes the following:

Section 4

- 1 (a) an offence against section 6 of the *Crimes Act 1914* that
2 relates to this Act;
- 3 (b) an offence against section 11.1, 11.4 or 11.5 of the *Criminal*
4 *Code* that relates to this Act;
- 5 (c) an offence that is taken to have been committed because of
6 section 11.2, 11.2A or 11.3 of the *Criminal Code* and that
7 relates to this Act.

8 ***original goods*** has the meaning given by section 5.

9 ***person assisting*** an authorised officer has the meaning given by
10 section 50.

11 ***premises*** includes the following:

- 12 (a) a structure, building, caravan, vehicle, vessel or aircraft;
13 (b) a place (whether or not enclosed or built on);
14 (c) a part of a thing referred to in paragraph (a) or (b).

15 ***registered broker*** means a person in respect of whom a registration
16 is in force under Division 3 of Part 2.

17 ***Secretary*** means the Secretary of the Department.

18 ***supply*** includes supply by way of sale, exchange, gift, lease, hire or
19 hire-purchase.

20 ***technology*** relating to goods means:

- 21 (a) information relating to the design, development, production,
22 manufacture, assembly, operation, repair, testing,
23 maintenance or modification of the goods (including
24 information in the form of blueprints, drawings, photographs,
25 plans, instructions, specifications, algorithms or
26 documentation); or
27 (b) software relating to the goods;
28 other than information specified in an instrument under
29 subsection (2).

30 (2) The Minister may, by legislative instrument, specify information
31 for the purposes of the definition of ***technology*** in subsection (1).

5 US Defence Articles*Article 3(1) US Defence Article*

- (1) **Article 3(1) US Defence Article** means goods:
- (a) the initial movement of which is from a member of the United States Community to an Australian Community member, or to an Australian Community facility, for an activity referred to in Article 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation Treaty; and
 - (b) listed in Part 1 of the Defense Trade Cooperation Munitions List immediately before the start of that movement.
- (2) Goods incorporating an Article 3(1) US Defence Article within the meaning of subsection (1) are also an **Article 3(1) US Defence Article**.
- (3) The modification of an Article 3(1) US Defence Article in any way does not affect the status of the goods concerned as an Article 3(1) US Defence Article.

Article 3(3) US Defence Article

- (4) **Article 3(3) US Defence Article** means goods:
- (a) acquired by, and delivered to, the Government of Australia as mentioned in Article 3(3) of the Defense Trade Cooperation Treaty; and
 - (b) listed in Part 1 of the Defense Trade Cooperation Munitions List at the time of that delivery.
- (5) Goods incorporating an Article 3(3) US Defence Article within the meaning of subsection (4) are also an **Article 3(3) US Defence Article**.
- (6) The modification of an Article 3(3) US Defence Article in any way does not affect the status of the goods concerned as an Article 3(3) US Defence Article.

Original goods

- (7) **Original goods** means goods that are:

Section 6

- 1 (a) an Article 3(1) US Defence Article within the meaning of
2 subsection (1); or
3 (b) an Article 3(3) US Defence Article within the meaning of
4 subsection (4).

5 *Incorporated goods*

- 6 (8) ***Incorporated goods*** means goods that are:
7 (a) an Article 3(1) US Defence Article within the meaning of
8 subsection (2); or
9 (b) an Article 3(3) US Defence Article within the meaning of
10 subsection (5).

11 Note: See also section 35 (about transition to the Defense Trade Cooperation
12 Treaty).

13 **6 Crown to be bound**

- 14 (1) This Act binds the Crown in each of its capacities.
15 (2) This Act does not make the Crown liable to be prosecuted for an
16 offence.

17 **7 Extension to external Territories**

18 This Act extends to every external Territory.

19 **8 Extension to things outside Australia**

20 Except so far as the contrary intention appears, this Act extends to
21 acts, omissions, matters and things outside Australia.

22 **9 Severability—additional effect of Act**

- 23 (1) Without limiting its effect apart from this section, this Act also has
24 the effect it would have if its application were limited to:
25 (a) giving effect to:
26 (i) the Defense Trade Cooperation Treaty; or
27 (ii) any international obligation of Australia arising
28 otherwise than under the Defense Trade Cooperation
29 Treaty; or

- 1 (b) matters external to Australia; or
2 (c) matters of international concern; or
3 (d) the defence of Australia; or
4 (e) things done, or omitted to be done, by constitutional
5 corporations; or
6 (f) things done, or omitted to be done, in the course of
7 constitutional trade or commerce; or
8 (g) things done using a postal, telegraphic, telephonic or other
9 like service (within the meaning of paragraph 51(v) of the
10 Constitution); or
11 (h) things done by, or in relation to, aliens (within the meaning
12 of paragraph 51(xix) of the Constitution).

13 (2) In this section:

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

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

- 17 (a) between Australia and places outside Australia; or
18 (b) among the States; or
19 (c) within a Territory, between a State and a Territory or
20 between 2 Territories.
21

1

2 **Part 2—Dealings in items in the Defence and**
3 **Strategic Goods List**

4 **Division 1—Primary offences**

5 **10 Offences—supplies and provision of defence services in relation**
6 **to the Defence and Strategic Goods List**

7 *Supplies*

8 (1) A person (the *supplier*) commits an offence if:

- 9 (a) the supplier supplies to another person technology relating to
10 goods, where the technology is listed in the Defence and
11 Strategic Goods List; and
12 (b) either:
13 (i) the supply is from a place in Australia to a place outside
14 Australia, the supplier is a foreign person and the other
15 person is a foreign person; or
16 (ii) the supplier is an Australian person and the other person
17 is a foreign person; and
18 (c) either:
19 (i) the supplier does not hold a permit under section 11
20 authorising the supply of the technology; or
21 (ii) the supply of the technology contravenes a condition of
22 a permit that the supplier holds under section 11; and
23 (d) there is no notice in force under subsection 14(1) in relation
24 to the supplier and the supply.

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

27 *Provision of defence services*

28 (2) A person (the *provider*) commits an offence if:

- 29 (a) either:

- 1 (i) the provider provides defence services to another person
2 in relation to goods, where the goods are listed in the
3 Defence and Strategic Goods List; or
4 (ii) the provider provides defence services to another person
5 in relation to technology relating to goods, where the
6 technology is listed in the Defence and Strategic Goods
7 List; and
8 (b) either:
9 (i) the defence services are received at a place outside
10 Australia, the provider is an Australian person and the
11 other person is a foreign person; or
12 (ii) the defence services are received at a place in Australia
13 and the other person is a foreign person; and
14 (c) either:
15 (i) the provider does not hold a permit under section 11
16 authorising the provision of the defence services; or
17 (ii) the provision of the defence services contravenes a
18 condition of a permit that the provider holds under
19 section 11; and
20 (d) there is no notice in force under subsection 14(1) in relation
21 to the provider and the provision of the defence services.

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

24 *Exceptions—Defense Trade Cooperation Treaty*

- 25 (3) Subsection (1) does not apply if:
26 (a) the supply is of technology relating to original goods; and
27 (b) the supply is by an Australian Community member or by a
28 member of the United States Community; and
29 (c) the supply is to an Australian Community member or a
30 member of the United States Community; and
31 (d) the supply is for an activity referred to in Article 3(1)(a), (b),
32 (c) or (d) of the Defense Trade Cooperation Treaty; and
33 (e) at the time of the supply, the original goods are listed in
34 Part 1 of the Defense Trade Cooperation Munitions List.

Part 2 Dealings in items in the Defence and Strategic Goods List

Division 1 Primary offences

Section 10

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

3 (4) Subsection (2) does not apply if:

4 (a) the defence services are provided in relation to goods that are
5 an Article 3(1) US Defence Article or an Article 3(3) US
6 Defence Article or the defence services are provided in
7 relation to technology relating to original goods; and

8 (b) the defence services are provided by an Australian
9 Community member or by a member of the United States
10 Community; and

11 (c) the defence services are provided to an Australian
12 Community member or a member of the United States
13 Community; and

14 (d) the defence services are for an activity referred to in Article
15 3(1)(a), (b), (c) or (d) of the Defense Trade Cooperation
16 Treaty; and

17 (e) at the time of the provision of the defence services, the
18 following is listed in Part 1 of the Defense Trade Cooperation
19 Munitions List:

20 (i) if the defence services are provided in relation to
21 original goods or in relation to technology relating to
22 original goods—the original goods;

23 (ii) if the defence services are provided in relation to
24 incorporated goods—any of the original goods
25 incorporated in the incorporated goods.

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

28 *Exceptions—Australian Defence Force members, APS employees*
29 *and members of the police*

30 (5) Subsection (1) does not apply if:

31 (a) the technology is supplied by a person who is a member of
32 the Australian Defence Force, an APS employee, a member
33 or special member of the Australian Federal Police or a
34 member of the police force of a State or Territory; and

35 (b) he or she supplies the technology in the course of his or her
36 duties as such a person.

Section 11

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

3 (6) Subsection (2) does not apply if:

- 4 (a) the defence services are provided by a person who is a
5 member of the Australian Defence Force, an APS employee,
6 a member or special member of the Australian Federal Police
7 or a member of the police force of a State or Territory; and
8 (b) he or she provides the defence services in the course of his or
9 her duties as such a person.

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

12 *Exception—regulations*

13 (7) Subsection (1) or (2) does not apply in the circumstances
14 prescribed by the regulations for the purposes of this subsection.

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

17 *Geographical jurisdiction*

18 (8) Section 15.2 of the *Criminal Code* (extended geographical
19 jurisdiction—category B) applies to an offence against
20 subsection (1) or (2).

21 *Definition*

22 (9) In this section:

23 *place* includes:

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

27 **11 Permits for purposes of section 10**

28 (1) A person may apply to the Minister for a permit under this section
29 to do an activity that is:

Part 2 Dealings in items in the Defence and Strategic Goods List

Division 1 Primary offences

Section 11

- 1 (a) the supply to another person of technology relating to goods,
2 where the technology is listed in the Defence and Strategic
3 Goods List; or
4 (b) the provision of defence services to another person in relation
5 to goods, where the goods are listed in the Defence and
6 Strategic Goods List; or
7 (c) the provision of defence services to another person in relation
8 to technology relating to goods, where the technology is
9 listed in the Defence and Strategic Goods List.

10 Note: Section 66 sets out application requirements.

- 11 (2) An application under subsection (1) may:
12 (a) cover more than one activity; and
13 (b) cover a particular activity for a period described in the
14 application.

15 Example 1: For paragraph (a)—a person applies for a permit to supply company A
16 technology relating to particular goods and to provide defence services
17 to company B in relation to other goods.

18 Example 2: For paragraph (b)—a person applies for a permit to supply company A
19 technology relating to particular goods for a 3-year period.

20 *Minister's decision*

- 21 (3) If a person makes an application under subsection (1) in
22 accordance with section 66, the Minister must decide whether or
23 not to give the person a permit to do each activity covered by the
24 application.
25 (4) The Minister may give the person a permit to do a specified
26 activity if the Minister is satisfied that the activity would not
27 prejudice the security, defence or international relations of
28 Australia.

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

- 30 (5) A permit given by the Minister may:
31 (a) cover more than one activity; and
32 (b) cover a specified activity for a period specified in, or worked
33 out in accordance with, the permit.

Section 12

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

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

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

6 *Permit conditions*

- 7 (7) A permit given to a person is subject to any conditions specified in
8 the permit.

9 Note: Section 12 deals with changing permit conditions.

10 *Revoking a permit*

- 11 (8) The Minister may, by writing, revoke a permit given to a person
12 under this section.

- 13 (9) However, the Minister may revoke the permit only if the Minister
14 is satisfied that any activity covered by the permit would prejudice
15 the security, defence or international relations of Australia.

- 16 (10) The Minister must give the person notice of the revocation and the
17 reasons for the revocation. The revocation takes effect at the time
18 the person receives the notice.

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

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

21 **12 Changing permit conditions**

22 *Imposing new conditions*

- 23 (1) After giving a person a permit under section 11, the Minister may
24 impose a new permit condition by giving the person notice of the
25 condition. The notice must include the reasons for imposing the
26 new condition.

Section 13

1

Removing or varying conditions

2

- (2) The Minister may remove or vary a condition of the permit by giving the person notice of the removal or variation. For a variation of a condition, the notice must include the reasons for the variation.

3

4

5

When new conditions or variations take effect

6

- (3) The imposition of a new permit condition under subsection (1), or the variation of a permit condition under subsection (2), takes effect at the time specified in the notice, which must be at least 7 days after the day on which the notice is given.

7

8

9

10

- (4) However, the notice may specify that the new permit condition or the variation takes effect at the time the person receives the notice if the Minister is satisfied that the new permit condition or variation needs to take effect then for reasons of urgency.

11

12

13

14

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

15

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

16

13 Breaching permit conditions

17

- (1) A person commits an offence if:

18

(a) the person is the holder of a permit under section 11; and

19

(b) the person does an act or omits to do an act; and

20

(c) the act or omission breaches a condition of the permit.

21

Penalty: 60 penalty units.

22

- (2) An offence against subsection (1) is an offence of strict liability.

23

Note: For strict liability, see section 6.1 of the *Criminal Code*.

24

- (3) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

25

26

27

14 Notice prohibiting activities

28

- (1) If the Minister believes or suspects that, if a person were to do one of the following activities in any circumstances or in particular circumstances:

29

30

- 1 (a) supply to another person technology relating to goods, where
2 the technology is listed in the Defence and Strategic Goods
3 List;
4 (b) provide defence services to another person in relation to
5 goods, where the goods are listed in the Defence and
6 Strategic Goods List;
7 (c) provide defence services to another person in relation to
8 technology relating to goods, where the technology is listed
9 in the Defence and Strategic Goods List;
10 the activity would prejudice the security, defence or international
11 relations of Australia, the Minister may give the person a notice:
12 (d) prohibiting the person from doing the activity; or
13 (e) prohibiting the person from doing the activity unless
14 conditions specified in the notice are complied with.

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

- 16 (2) A notice given to a person under subsection (1) must set out the
17 Minister's reasons for giving the notice.

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

19 *Period notice in force*

- 20 (3) A notice given to a person under subsection (1) comes into force at
21 the time the person receives the notice. This subsection is subject
22 to subsection (5).
23 (4) A notice given to a person under subsection (1) remains in force
24 for the period specified in, or worked out in accordance with, the
25 notice (which must not be more than 12 months), unless revoked
26 earlier.

27 *Later notices*

- 28 (5) A notice may be given to a person under subsection (1) while an
29 earlier notice given to the person under subsection (1) is in force.
30 The later notice may be expressed to come into force at the time
31 the earlier notice ceases to be in force.

Section 14

- 1 (6) Subsection (5) does not prevent a notice being given to a person
2 under subsection (1) after an earlier notice given to the person
3 under subsection (1) ceases to be in force.

4 *Notice not a legislative instrument*

- 5 (7) A notice under subsection (1) is not a legislative instrument.

6 *Revoking a notice*

- 7 (8) The Minister may, by writing, revoke a notice given to a person
8 under subsection (1).

- 9 (9) The Minister must give the person notice of the revocation. The
10 revocation takes effect at the time the person receives the notice.

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

12 *Offence*

- 13 (10) A person commits an offence if:
14 (a) the person does one of the following activities:
15 (i) supplies technology relating to goods, where the
16 technology is listed in the Defence and Strategic Goods
17 List;
18 (ii) provides defence services in relation to goods, where
19 the goods are listed in the Defence and Strategic Goods
20 List;
21 (iii) provides defence services in relation to technology
22 relating to goods, where the technology is listed in the
23 Defence and Strategic Goods List; and
24 (b) the activity contravenes a notice, or a condition specified in a
25 notice, that is in force under subsection (1); and
26 (c) the person knows of the contravention.

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

- 29 (11) Section 15.2 of the *Criminal Code* (extended geographical
30 jurisdiction—category B) applies to an offence against
31 subsection (10).
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2 **Division 2—Brokering offences**

3 **15 Offence—arranging supplies and provision of defence services in**
4 **relation to the Defence and Strategic Goods List**

5 (1) A person (the *first person*) commits an offence if:

6 (a) one of the following applies:

7 (i) the first person arranges for another person to supply
8 goods, where the goods are listed in the Defence and
9 Strategic Goods List and the supply is, or is to be, from
10 a place outside Australia to another place outside
11 Australia;

12 (ii) the first person arranges for another person to supply
13 technology relating to goods, where the technology is
14 listed in the Defence and Strategic Goods List and the
15 supply is, or is to be, from a place outside Australia to
16 another place outside Australia;

17 (iii) the first person arranges for another person to provide
18 defence services in relation to goods, where the goods
19 are listed in the Defence and Strategic Goods List and
20 the defence services are, or are to be, received at a place
21 outside Australia;

22 (iv) the first person arranges for another person to provide
23 defence services in relation to technology relating to
24 goods, where the technology is listed in the Defence and
25 Strategic Goods List and the defence services are, or are
26 to be, received at a place outside Australia; and

27 (b) either:

28 (i) the first person does not hold a permit under section 16
29 authorising the arrangement; or

30 (ii) the arrangement contravenes a condition of a permit that
31 the first person holds under section 16.

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

Section 15

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Exceptions

- (2) Subsection (1) does not apply if:
- (a) the first person is a member of the Australian Defence Force, an APS employee, a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; and
 - (b) he or she does the arranging in the course of his or her duties as such a person.

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

- (3) 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 (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) Subsection (1) does not apply if:
- (a) the first person arranges for another person to supply goods, or to supply technology relating to goods, where the supply is, or is to be, from a place in a foreign country to another place in that country; and
 - (b) that country is a Participating State for the purposes of the Wassenaar Arrangement.

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

Geographical jurisdiction

- (5) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

Definitions

- (6) In this section:
- place** includes:
- (a) a vehicle, vessel or aircraft; and
 - (b) an area of water; and

1 (c) a fixed or floating structure or installation of any kind.

2 **Wassenaar Arrangement** means the Wassenaar Arrangement on
3 Export Controls for Conventional Arms and Dual-Use Goods and
4 Technologies, adopted in Vienna, Austria, on 11 and 12 July 1996,
5 as amended from time to time.

6 **16 Permits for purposes of section 15**

7 (1) A registered broker may apply to the Minister for a permit under
8 this section to:

- 9 (a) arrange for another person to supply goods, where the goods
10 are listed in the Defence and Strategic Goods List; or
11 (b) arrange for another person to supply technology relating to
12 goods, where the technology is listed in the Defence and
13 Strategic Goods List; or
14 (c) arrange for another person to provide defence services in
15 relation to goods, where the goods are listed in the Defence
16 and Strategic Goods List; or
17 (d) arrange for another person to provide defence services in
18 relation to technology relating to goods, where the
19 technology is listed in the Defence and Strategic Goods List.

20 Note: Section 66 sets out application requirements.

21 (2) An application under subsection (1) may:

- 22 (a) be for more than one arrangement; and
23 (b) be for a particular arrangement, where the activity covered by
24 the arrangement is for a period described in the application.

25 Example 1: For paragraph (a)—a registered broker applies for a permit to arrange
26 for company A to supply goods and to arrange for company B to
27 supply technology relating to goods.

28 Example 2: For paragraph (b)—a registered broker applies for a permit to arrange
29 for company A to supply goods for a 3-year period.

30 *Minister's decision*

31 (3) If a registered broker makes an application under subsection (1) in
32 accordance with section 66, the Minister must decide whether or
33 not to give the broker a permit for each arrangement covered by the
34 application.

Section 16

- 1 (4) The Minister may give the broker a permit for a specified
2 arrangement if the Minister is satisfied that the activity covered by
3 the arrangement would not prejudice the security, defence or
4 international relations of Australia.

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

- 6 (5) A permit given by the Minister may:
7 (a) be for more than one arrangement; and
8 (b) be for a specified arrangement, where the activity covered by
9 the arrangement is for a period specified in, or worked out in
10 accordance with, the permit.

- 11 (6) If the Minister refuses to give the broker a permit for an
12 arrangement covered by the application, the Minister must give the
13 broker notice of the refusal and the reasons for the refusal.

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

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

16 *Permit conditions*

- 17 (7) A permit given to a registered broker is subject to any conditions
18 specified in the permit.

19 Note: Section 17 deals with changing permit conditions.

20 *Revoking a permit*

- 21 (8) The Minister may, by writing, revoke a permit given to a registered
22 broker under this section.

23 Note: See also subsection 23(3) (about automatic revocation of a permit
24 under this section upon cancellation of the broker's registration).

- 25 (9) However, the Minister may revoke the permit only if the Minister
26 is satisfied that any activity covered by an arrangement authorised
27 by the permit would prejudice the security, defence or international
28 relations of Australia.

- 29 (10) The Minister must give the broker notice of the revocation and the
30 reasons for the revocation. The revocation takes effect at the time
31 the broker receives the notice.

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

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

2 **17 Changing permit conditions**

3 *Imposing new conditions*

4 (1) After giving a registered broker a permit under section 16, the
5 Minister may impose a new permit condition by giving the broker
6 notice of the condition. The notice must include the reasons for
7 imposing the new condition.

8 *Removing or varying conditions*

9 (2) The Minister may remove or vary a condition of the permit by
10 giving the broker notice of the removal or variation. For a variation
11 of a condition, the notice must include the reasons for the variation.

12 *When new conditions or variations take effect*

13 (3) The imposition of a new permit condition under subsection (1), or
14 the variation of a permit condition under subsection (2), takes
15 effect at the time specified in the notice, which must be at least 7
16 days after the day on which the notice is given.

17 (4) However, the notice may specify that the new permit condition or
18 the variation takes effect at the time the broker receives the notice
19 if the Minister is satisfied that the new permit condition or
20 variation needs to take effect then for reasons of urgency.

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

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

23 **18 Breaching permit conditions**

24 (1) A registered broker commits an offence if:
25 (a) the broker is the holder of a permit under section 16; and
26 (b) the broker does an act or omits to do an act; and
27 (c) the act or omission breaches a condition of the permit.

28 Penalty: 60 penalty units.

29 (2) An offence against subsection (1) is an offence of strict liability.

Part 2 Dealings in items in the Defence and Strategic Goods List

Division 2 Brokering offences

Section 18

- 1 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 2 (3) Section 15.2 of the *Criminal Code* (extended geographical
- 3 jurisdiction—category B) applies to an offence against
- 4 subsection (1).
- 5

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2 **Division 3—Registered brokers**

3 **19 Applying to be a registered broker**

4 A person may apply to the Minister to be registered as a broker
5 under this Division.

6 Note 1: Section 66 sets out application requirements.

7 Note 2: Only a registered broker is able to obtain a permit under Division 2. A
8 person may commit an offence under that Division for engaging in
9 certain conduct without a permit.

10 **20 Registering brokers**

11 *Minister's decision*

12 (1) If a person makes an application under section 19 in accordance
13 with section 66, the Minister must decide whether or not to register
14 the person as a broker under this Division.

15 (2) The Minister must, in writing, register the person as a broker under
16 this Division if the Minister is satisfied that the person is a fit and
17 proper person.

18 (3) In determining whether the person is a fit and proper person, the
19 Minister must have regard to:

20 (a) any conviction of the person of an offence against a law of
21 the Commonwealth, a State, a Territory or a foreign country
22 punishable by imprisonment for 12 months or longer, if that
23 offence was committed within the 10 years immediately
24 before the application for registration; and

25 (b) if the person has been previously registered under this
26 Division—whether the person breached a condition of that
27 registration or whether that registration was cancelled; and

28 (c) if the person has been given a permit under this Part—
29 whether the person has breached a condition of that permit;
30 and

31 (d) the financial position of the person; and

Section 20

- 1 (e) whether the application for registration contains information
2 that is false or misleading; and
3 (f) if the person is a body corporate—the following matters in
4 relation to a manager of the body corporate:
5 (i) any conviction of the manager of an offence covered by
6 paragraph (a);
7 (ii) the financial position of the manager.

8 The Minister may have regard to any other matters that the
9 Minister considers appropriate.

- 10 (4) If the Minister is not satisfied that the person is a fit and proper
11 person, the Minister must refuse to register the person as a broker
12 under this Division.

13 *Notice of decision*

- 14 (5) The Minister must give the person notice of the Minister's decision
15 on the application. For a decision refusing registration, the notice
16 must set out the reasons for the refusal.

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

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

19 *Period of registration*

- 20 (6) If the Minister registers the person as a broker under this Division,
21 the Minister must specify in the notice under subsection (5) the day
22 on which the registration begins. The registration is for a period of
23 5 years, unless cancelled earlier.

24 Note: Section 21 deals with renewing registration and section 23 deals with
25 cancelling registration.

26 *Conditions of registration*

- 27 (7) A registered broker's registration is subject to any conditions
28 specified in the notice under subsection (5).

29 Note: Section 22 deals with changing conditions of registration.

1 **21 Renewing registration**

2 *Application for renewal*

- 3 (1) A registered broker may apply to the Minister to renew the
4 person's registration (the *current registration*).

5 Note: Section 66 sets out application requirements.

- 6 (2) An application under subsection (1) must be made at least 3
7 months but not more than 6 months before the current registration
8 is due to end.

9 *Minister's decision*

- 10 (3) If a person makes an application under subsection (1) in
11 accordance with subsection (2) and section 66, the Minister must
12 decide whether or not to renew the person's current registration.

- 13 (4) The Minister must, in writing, renew the person's current
14 registration if the Minister is satisfied that the person is a fit and
15 proper person.

- 16 (5) In determining whether a person is a fit and proper person, the
17 Minister must have regard to:

- 18 (a) any conviction of the person of an offence against a law of
19 the Commonwealth, a State, a Territory or a foreign country
20 punishable by imprisonment for 12 months or longer, if that
21 offence was committed within the 10 years immediately
22 before the application for renewal; and
23 (b) whether the person has breached a condition of the current
24 registration; and
25 (c) if the person has been given a permit under this Part—
26 whether the person has breached a condition of that permit;
27 and
28 (d) the financial position of the person; and
29 (e) whether the application for renewal contains information that
30 is false or misleading; and
31 (f) if the person is a body corporate—the following matters in
32 relation to a manager of the body corporate:
-

Section 21

1 (i) any conviction of the manager of an offence covered by
2 paragraph (a);

3 (ii) the financial position of the manager.

4 The Minister may have regard to any other matters that the
5 Minister considers appropriate.

6 (6) If the Minister is not satisfied that the person is a fit and proper
7 person, the Minister must refuse to renew the person's current
8 registration.

9 *Notice of decision*

10 (7) The Minister must give the person notice of the Minister's decision
11 on the application. For a decision refusing renewal, the notice must
12 set out the reasons for the refusal.

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

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

15 *Minister renews registration before expiry of registration*

16 (8) If the Minister renews the person's current registration before the
17 end of the period of that registration and that registration is not
18 cancelled before the end of that period:

19 (a) that registration is renewed for a period of 5 years beginning
20 on the day after the last day of the current registration, unless
21 cancelled earlier; and

22 (b) that registration is renewed subject to the conditions applying
23 to the current registration immediately before the renewal
24 begins.

25 Note: Section 23 deals with cancelling registration and section 22 deals with
26 changing conditions of registration.

27 *Minister does not renew registration before expiry of registration*

28 (9) If the Minister has not made a decision on the application before
29 the end of the last day (the *expiry day*) of the current registration:

30 (a) that registration is taken to continue after the expiry day until
31 the person receives notice of the Minister's decision on the
32 application, unless the registration is cancelled earlier; and

33 (b) if the Minister renews the person's current registration:

- 1 (i) that registration is renewed for a period of 5 years
2 beginning on the day after the expiry day, unless
3 cancelled earlier; and
4 (ii) the conditions applying to the current registration
5 immediately before the Minister's decision continue to
6 apply after the Minister's decision.

7 Note: Section 23 deals with cancelling registration and section 22 deals with
8 changing conditions of registration.

9 Example: An individual's registration is due to end on 31 October (the *expiry*
10 *day*). On 1 June the individual applies to renew the registration. The
11 Minister has not decided the application by the end of 31 October.

12 The registration continues automatically past 31 October until the
13 Minister decides the application. The conditions applying to the
14 registration at the end of 31 October will continue to apply after
15 31 October and these may be changed under section 22.

16 On 1 December the Minister renews the individual's registration. The
17 registration is renewed for a period of 5 years beginning on
18 1 November.

19 The conditions applying to the registration immediately before the
20 Minister's decision on 1 December will continue to apply after that
21 decision.

22 *Registration may be renewed more than once*

- 23 (10) A registered broker's registration may be renewed more than once
24 under this section.

25 **22 Changing registration conditions**

26 *Imposing new conditions*

- 27 (1) After registering a person as a broker under this Division, the
28 Minister may impose a new condition on the broker's registration
29 by giving the broker notice of the condition. The notice must
30 include the reasons for imposing the new condition.

31 *Removing or varying conditions*

- 32 (2) The Minister may remove or vary a condition of a registered
33 broker's registration by giving the broker notice of the removal or

Section 23

1 variation. For a variation of a condition, the notice must include the
2 reasons for the variation.

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

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

5 **23 Cancelling the registration of a broker**

6 (1) The Minister may, by writing, cancel the registration of a
7 registered broker:

8 (a) if the Minister is satisfied that the broker has breached a
9 condition of the registration; or

10 (b) if the Minister is satisfied that the broker has breached a
11 condition of a permit given to the broker under this Part; or

12 (c) if the broker is convicted of an offence against a law of the
13 Commonwealth, a State, a Territory or a foreign country
14 punishable by imprisonment for 12 months or longer; or

15 (d) if the Minister is satisfied that the broker's application under
16 section 19 for the registration, or an application by the broker
17 under subsection 21(1) to renew the registration, contained
18 information that was false or misleading; or

19 (e) in any other circumstances that the Minister considers
20 appropriate.

21 (2) The Minister must give the broker notice of the cancellation and
22 the reasons for the cancellation. The cancellation takes effect at the
23 time the broker receives the notice.

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

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

26 *Automatic revocation of permits*

27 (3) If the Minister cancels a person's registration as a registered
28 broker, any permit held by the person under section 16 is taken to
29 be revoked at the time that cancellation takes effect.

1 **24 Register of Brokers**

2 (1) The Secretary is to maintain a register, to be known as the Register
3 of Brokers, in which the Secretary includes the following details
4 for each registered broker:

5 (a) the name of the broker;

6 (b) the day on which the broker's registration is due to end;

7 (c) a statement as to whether the broker's registration is subject
8 to conditions.

9 (2) The Register is to be maintained by electronic means.

10 (3) The Register is to be made available for inspection on the
11 Department's website.

12 (4) The Register is not a legislative instrument.

13 **25 Extended meaning of conviction**

14 A reference in this Division to a person convicted of an offence
15 includes a reference to a person in respect of whom an order has
16 been made relating to the offence under:

17 (a) section 19B of the *Crimes Act 1914*; or

18 (b) a corresponding provision of a law of a State, a Territory or a
19 foreign country.

20 Note: Section 19B of the *Crimes Act 1914* empowers a court that has found
21 a person to have committed an offence to take action without
22 proceeding to record a conviction.
23

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2 **Part 3—Defense Trade Cooperation Treaty**

3 **Division 1—Preliminary**

4 **26 Simplified outline**

5

The following is a simplified outline of this Part:

6

7

- This Part implements the Defense Trade Cooperation Treaty between Australia and the United States of America.

8

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10

- There is a process for approving bodies corporate as members of the Australian Community referred to in Article 4(1)(c) of the Treaty and for suspending or cancelling approvals.

11

12

- There are offences relating to Article 3(1) US Defence Articles and Article 3(3) US Defence Articles.

13

14

- There are provisions dealing with the transition to the Treaty.

1

2 **Division 2—Membership of the Australian Community**

3 **27 Approval of bodies corporate as members of the Australian**
4 **Community**

5 (1) A person who is a body corporate may apply to the Minister for
6 approval as a member of the Australian Community referred to in
7 Article 4(1)(c) of the Defense Trade Cooperation Treaty.

8 Note 1: Section 66 sets out application requirements.

9 Note 2: The offences in section 10 (about supplies and provision of defence
10 services relating to the Defence and Strategic Goods List) may not
11 apply to the holder of an approval.

12 *Minister's decision*

13 (2) If a person makes an application under subsection (1) in
14 accordance with section 66, the Minister must, in writing, approve,
15 or refuse to approve, the person as a member of the Australian
16 Community.

17 (3) In deciding whether to approve the person as a member of the
18 Australian Community, the Minister must have regard to:
19 (a) whether the person has access to a facility that is included, or
20 that is capable of being included, on a list, managed by the
21 Department, of facilities accredited for storing and handling
22 classified information and material; and
23 (b) any conviction of the person of:
24 (i) an offence against this Act or the *Weapons of Mass*
25 *Destruction (Prevention of Proliferation) Act 1995*; or
26 (ii) an offence against the *Customs Act 1901* or regulations
27 made under that Act; or
28 (iii) an offence against the Arms Export Control Act of the
29 United States of America (22 United States Code,
30 Chapter 39) or the International Traffic in Arms
31 Regulations (22 Code of Federal Regulations,
32 Parts 120-130) made under that Act;

Section 27

- 1 if that offence was committed within the 10 years
2 immediately before the application for approval; and
- 3 (c) whether the person's holding of such an approval would
4 prejudice the security, defence or international relations of
5 Australia; and
- 6 (d) whether the application for approval contains information
7 that is false or misleading; and
- 8 (e) the extent of any foreign ownership or control (whether direct
9 or indirect) of the body corporate; and
- 10 (f) the following matters in relation to a manager of the body
11 corporate:
- 12 (i) any conviction of the manager of an offence covered by
13 paragraph (b);
- 14 (ii) whether the manager is an Australian citizen.
- 15 The Minister may have regard to any other matters that the
16 Minister considers appropriate.
- 17 (4) The Minister must not approve the person as a member of the
18 Australian Community unless the Minister is satisfied that the
19 Government of the United States of America has agreed in writing
20 to the approval being given.
- 21 (5) If the Minister approves the person as a member of the Australian
22 Community, the Minister must give the person the approval.
- 23 Note 1: Section 67 deals with giving approvals under this Act.
24 Note 2: Section 28 deals with approval conditions.
- 25 (6) If the Minister refuses to approve the person as a member of the
26 Australian Community, the Minister must give the person notice of
27 the refusal and the reasons for the refusal.
- 28 Note 1: Section 67 deals with giving notices under this Act.
29 Note 2: Section 68 deals with disclosing reasons for decisions.
- 30 *When approval begins*
- 31 (7) If the Minister approves the person as a member of the Australian
32 Community, the Minister must specify in the approval the day on
33 which the approval begins.

1 *Extended meaning of conviction*

2 (8) A reference in this section to a person convicted of an offence
3 includes a reference to a person in respect of whom an order has
4 been made relating to the offence under:

- 5 (a) section 19B of the *Crimes Act 1914*; or
6 (b) a corresponding provision of a law of the United States of
7 America.

8 Note: Section 19B of the *Crimes Act 1914* empowers a court that has found
9 a person to have committed an offence to take action without
10 proceeding to record a conviction.

11 *Approval not a legislative instrument*

12 (9) An approval under this section is not a legislative instrument.

13 **28 Approval conditions**

14 *Conditions of an approval*

15 (1) An approval given to a person under section 27 is subject to:
16 (a) any conditions specified in the approval; and
17 (b) a condition that the person must allow an authorised officer,
18 in accordance with section 41, to enter any premises referred
19 to in that section for the purpose of finding out whether the
20 person has complied with this Part or Part 6 or another
21 condition of the approval; and

22 Note: Part 4 sets out the monitoring powers that an authorised officer
23 may exercise in relation to those premises.

- 24 (c) any conditions prescribed by the regulations in relation to:
25 (i) access to Article 3(1) US Defence Articles or Article
26 3(3) US Defence Articles in the person's possession,
27 custody or control; or
28 (ii) access to technology relating to original goods, being
29 technology in the person's possession, custody or
30 control; and
31 (d) any conditions prescribed by the regulations in relation to:
32 (i) investigating or reporting the loss, theft or destruction of
33 Article 3(1) US Defence Articles or Article 3(3) US

Section 28

- 1 Defence Articles in the person's possession, custody or
2 control; or
- 3 (ii) investigating or reporting the loss, theft or destruction of
4 technology relating to original goods, being technology
5 in the person's possession, custody or control; and
- 6 (e) any conditions prescribed by the regulations in relation to:
- 7 (i) the marking, handling or storing of Article 3(1) US
8 Defence Articles or Article 3(3) US Defence Articles in
9 the person's possession, custody or control; or
- 10 (ii) the marking, handling or storing of technology relating
11 to original goods, being technology in the person's
12 possession, custody or control; and
- 13 (f) in relation to defence services provided by the person in
14 relation to goods that are an Article 3(1) US Defence Article
15 or an Article 3(3) US Defence Article or to technology
16 relating to original goods—any conditions prescribed by the
17 regulations in relation to the provision, by the person to the
18 recipient of the services, of documentation:
- 19 (i) for defence services provided in relation to goods that
20 are an Article 3(1) US Defence Article or an Article
21 3(3) US Defence Article—identifying the goods; or
- 22 (ii) for defence services provided in relation to technology
23 relating to original goods—identifying the technology
24 and the goods; and
- 25 (g) any conditions prescribed by the regulations in relation to the
26 person giving reports relating to the person's compliance
27 with this Act and the regulations; and
- 28 (h) any conditions prescribed by the regulations in relation to
29 Australian Defence Articles (within the meaning of the
30 regulations) in the person's possession, custody or control.

31 *Changing approval conditions*

- 32 (2) After giving the approval, the Minister may impose a new approval
33 condition by giving the person notice of the condition. The notice
34 must include the reasons for imposing the new condition.
- 35 (3) The Minister may remove or vary a condition of the approval
36 imposed under paragraph (1)(a) or subsection (2) by giving the

1 person notice of the removal or variation. For a variation of a
2 condition, the notice must include the reasons for the variation.

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

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

5 *Ordinary offence*

- 6 (4) A person commits an offence if:
7 (a) the person is the holder of an approval under section 27; and
8 (b) the person does an act or omits to do an act; and
9 (c) the act or omission breaches a condition of the approval; and
10 (d) the condition is one covered by paragraph (1)(c), (d), (e) or
11 (f) of this section.

12 Penalty: 600 penalty units.

13 *Strict liability offence*

- 14 (5) A person commits an offence if:
15 (a) the person is the holder of an approval under section 27; and
16 (b) the person does an act or omits to do an act; and
17 (c) the act or omission breaches a condition of the approval.

18 Penalty: 300 penalty units.

- 19 (6) An offence against subsection (5) is an offence of strict liability.

20 Note: For strict liability, see section 6.1 of the *Criminal Code*.

21 *Geographical jurisdiction*

- 22 (7) Section 15.2 of the *Criminal Code* (extended geographical
23 jurisdiction—category B) applies to an offence against
24 subsection (4) or (5).

25 *Notice not a legislative instrument*

- 26 (8) A notice under subsection (2) or (3) is not a legislative instrument.

Section 29

1 **29 Suspending an approval**

- 2 (1) The Minister may, by writing, suspend an approval given to a
3 person under section 27:
4 (a) if the Minister reasonably believes that the person has
5 contravened a provision of this Act; or
6 (b) if the Minister reasonably believes that the person has
7 breached a condition of the approval; or
8 (c) if the Minister is satisfied that the person's holding of the
9 approval prejudices the security, defence or international
10 relations of Australia; or
11 (d) if the Minister is satisfied that the person's application under
12 section 27 for the approval contained information that was
13 false or misleading; or
14 (e) if the Minister is satisfied that it is appropriate to do so
15 because of a change in any of the circumstances based on
16 which the Minister gave the approval; or
17 (f) in any other circumstances prescribed by the regulations for
18 the purposes of this paragraph.
- 19 (2) The Minister must give the person notice of the suspension and the
20 reasons for the suspension. The suspension takes effect at the time
21 the person receives the notice.
- 22 Note 1: Section 67 deals with giving notices under this Act.
23 Note 2: Section 68 deals with disclosing reasons for decisions.
- 24 (3) The Minister must specify in the notice under subsection (2):
25 (a) a period of suspension (which must not be more than 60
26 days); or
27 (b) one or more conditions for the lifting of the suspension.

28 *Lifting of suspension*

- 29 (4) If 2 or more conditions are specified for the lifting of the
30 suspension, one of them may be that a specified period of
31 suspension has ended (which must not be more than 60 days).
- 32 (5) If:

- 1 (a) the Minister specifies one or more conditions for the lifting
2 of the suspension; and
3 (b) the Minister is satisfied that those conditions have been met;
4 the Minister may, by notice given to the person, lift the suspension.
5 The suspension is lifted at the time the person receives the notice.

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

7 *Effect of suspension*

- 8 (6) Subject to subsection (7), the holder of an approval under
9 section 27 that is suspended under this section is taken not to hold
10 the approval at any time while the suspension has effect.
- 11 (7) If an approval given to a body corporate under section 27 is
12 suspended under this section:
- 13 (a) for the purposes of the application of sections 28, 31, 32 and
14 33, Part 4 and subsection 58(3) to the body corporate—the
15 body corporate is taken to continue to hold the approval
16 while the suspension has effect; and
17 (b) for the purposes of the application of sections 31, 32 and 33
18 to a person referred to in paragraph (c) of the definition of
19 *Australian Community member* in subsection 4(1)—the
20 body corporate is taken to continue to hold the approval
21 while the suspension has effect.
- 22 (8) An approval under section 27 may be cancelled under section 30
23 even while it is suspended under this section.

24 *Non-legislative instruments*

- 25 (9) The following are not legislative instruments:
26 (a) a suspension under this section;
27 (b) a notice under subsection (5).

28 **30 Cancelling an approval**

- 29 (1) The Minister may, by writing, cancel an approval given to a person
30 under section 27:
- 31 (a) if the Minister reasonably believes that the person has
32 contravened a provision of this Act; or

Section 30

- 1 (b) if the Minister reasonably believes that the person has
2 breached a condition of the approval; or
3 (c) if the Minister is satisfied that the person's holding of the
4 approval prejudices the security, defence or international
5 relations of Australia; or
6 (d) if the Minister is satisfied that the person's application under
7 section 27 for the approval contained information that was
8 false or misleading; or
9 (e) if the person requests the Minister, in writing, to cancel the
10 approval; or
11 (f) if the Minister is satisfied that it is appropriate to do so
12 because of a change in any of the circumstances based on
13 which the Minister gave the approval; or
14 (g) in any other circumstances prescribed by the regulations for
15 the purposes of this paragraph.
- 16 (2) The Minister must give the person notice of the cancellation and
17 the reasons for the cancellation. The cancellation takes effect at the
18 time the person receives the notice.
- 19 Note 1: Section 67 deals with giving notices under this Act.
20 Note 2: Section 68 deals with disclosing reasons for decisions.
- 21 (3) A cancellation under this section is not a legislative instrument.
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2 **Division 3—Main offences**

3 **31 US Defence Articles listed in the Defense Trade Cooperation**
4 **Munitions List**

5 *Dealings outside Australia and the USA*

6 (1) An Australian Community member (the *supplier*) commits an
7 offence if:

- 8 (a) the supplier supplies goods, or supplies technology relating to
9 goods, where the supply is to a place that is outside Australia
10 and is outside the United States of America; and
11 (b) the supply is of goods that are an Article 3(1) US Defence
12 Article or an Article 3(3) US Defence Article or the supply is
13 of technology relating to original goods; and
14 (c) there is no notice in force under subsection (8) in relation to
15 the supplier and the supply; and
16 (d) at the time of the supply, the following is listed in Part 1 of
17 the Defense Trade Cooperation Munitions List:
18 (i) if the supply is of original goods or is of technology
19 relating to original goods—the original goods;
20 (ii) if the supply is of incorporated goods—any of the
21 original goods incorporated in the incorporated goods.

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

24 **Note:** See also section 35 (about transition to the Defense Trade Cooperation
25 Treaty).

26 (2) An Australian Community member (the *provider*) commits an
27 offence if:

- 28 (a) the provider provides defence services in relation to goods or
29 in relation to technology relating to goods, where the defence
30 services are received at a place that is outside Australia and is
31 outside the United States of America; and
32 (b) the defence services are provided in relation to goods that are
33 an Article 3(1) US Defence Article or an Article 3(3) US

Section 31

- 1 Defence Article or the defence services are provided in
2 relation to technology relating to original goods; and
3 (c) there is no notice in force under subsection (8) in relation to
4 the provider and the provision of the defence services; and
5 (d) at the time of the provision of the defence services, the
6 following is listed in Part 1 of the Defense Trade Cooperation
7 Munitions List:
8 (i) if the defence services are provided in relation to
9 original goods or in relation to technology relating to
10 original goods—the original goods;
11 (ii) if the defence services are provided in relation to
12 incorporated goods—any of the original goods
13 incorporated in the incorporated goods.

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

16 Note: See also section 35 (about transition to the Defense Trade Cooperation
17 Treaty).

18 *Dealings in Australia or the USA outside the Treaty framework*

- 19 (3) An Australian Community member (the *supplier*) commits an
20 offence if:
21 (a) the supplier supplies goods, or supplies technology relating to
22 goods, where the supply is to a place in Australia or in the
23 United States of America; and
24 (b) the supply is of goods that are an Article 3(1) US Defence
25 Article or an Article 3(3) US Defence Article or the supply is
26 of technology relating to original goods; and
27 (c) the supply is to none of the following:
28 (i) the Commonwealth;
29 (ii) an Australian Community member;
30 (iii) an Australian Community facility;
31 (iv) a member of the United States Community; and
32 (d) there is no notice in force under subsection (8) in relation to
33 the supplier and the supply; and
34 (e) at the time of the supply, the following is listed in Part 1 of
35 the Defense Trade Cooperation Munitions List:

- 1 (i) if the supply is of original goods or is of technology
2 relating to original goods—the original goods;
3 (ii) if the supply is of incorporated goods—any of the
4 original goods incorporated in the incorporated goods.

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

7 **Note:** See also section 35 (about transition to the Defense Trade Cooperation
8 Treaty).

9 (4) An Australian Community member (the *provider*) commits an
10 offence if:

11 (a) the provider provides defence services in relation to goods or
12 in relation to technology relating to goods, where the defence
13 services are received at a place in Australia or in the United
14 States of America; and

15 (b) the defence services are provided in relation to goods that are
16 an Article 3(1) US Defence Article or an Article 3(3) US
17 Defence Article or the defence services are provided in
18 relation to technology relating to original goods; and

19 (c) the provision of the defence services is to none of the
20 following:

21 (i) the Commonwealth;

22 (ii) an Australian Community member;

23 (iii) a member of the United States Community; and

24 (d) there is no notice in force under subsection (8) in relation to
25 the provider and the provision of the defence services; and

26 (e) at the time of the provision of the defence services, the
27 following is listed in Part 1 of the Defense Trade Cooperation
28 Munitions List:

29 (i) if the defence services are provided in relation to
30 original goods or in relation to technology relating to
31 original goods—the original goods;

32 (ii) if the defence services are provided in relation to
33 incorporated goods—any of the original goods
34 incorporated in the incorporated goods.

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

Part 3 Defense Trade Cooperation Treaty

Division 3 Main offences

Section 31

1 Note: See also section 35 (about transition to the Defense Trade Cooperation
2 Treaty).

3 *Dealings in Australia or the USA within the Treaty framework*

4 (5) An Australian Community member (the *supplier*) commits an
5 offence if:

6 (a) the supplier supplies goods, or supplies technology relating to
7 goods, where the supply is to:

8 (i) a place in Australia or in the United States of America;
9 and

10 (ii) the Commonwealth, an Australian Community member,
11 an Australian Community facility or a member of the
12 United States Community; and

13 (b) the supply is of goods that are an Article 3(1) US Defence
14 Article or an Article 3(3) US Defence Article or the supply is
15 of technology relating to original goods; and

16 (c) neither of the following apply:

17 (i) the supply is for an activity referred to in Article 3(1)(a),
18 (b) or (c) of the Defense Trade Cooperation Treaty,
19 being an activity that is publicly identified in
20 accordance with paragraph (5) of Section 2 of the
21 Implementing Arrangements;

22 (ii) the supply is for an activity referred to in Article 3(1)(d)
23 of the Defense Trade Cooperation Treaty, being an
24 activity that is open to participation by Australian
25 Community members as mentioned in paragraph (1)(b)
26 of Section 3 of the Implementing Arrangements; and

27 (d) there is no notice in force under subsection (8) in relation to
28 the supplier and the supply; and

29 (e) at the time of the supply, the following is listed in Part 1 of
30 the Defense Trade Cooperation Munitions List:

31 (i) if the supply is of original goods or is of technology
32 relating to original goods—the original goods;

33 (ii) if the supply is of incorporated goods—any of the
34 original goods incorporated in the incorporated goods.

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

Section 31

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Note: See also section 35 (about transition to the Defense Trade Cooperation Treaty).

- (6) An Australian Community member (the *provider*) commits an offence if:
- (a) the provider provides defence services in relation to goods or in relation to technology relating to goods, where the defence services are received:
 - (i) at a place in Australia or in the United States of America; and
 - (ii) by the Commonwealth, an Australian Community member or a member of the United States Community; and
 - (b) the defence services are provided in relation to goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the defence services are provided in relation to technology relating to original goods; and
 - (c) neither of the following apply:
 - (i) the defence services are for an activity referred to in Article 3(1)(a), (b) or (c) of the Defense Trade Cooperation Treaty, being an activity that is publicly identified in accordance with paragraph (5) of Section 2 of the Implementing Arrangements;
 - (ii) the defence services are for an activity referred to in Article 3(1)(d) of the Defense Trade Cooperation Treaty, being an activity that is open to participation by Australian Community members as mentioned in paragraph (1)(b) of Section 3 of the Implementing Arrangements; and
 - (d) there is no notice in force under subsection (8) in relation to the provider and the provision of the defence services; and
 - (e) at the time of the provision of the defence services, the following is listed in Part 1 of the Defense Trade Cooperation Munitions List:
 - (i) if the defence services are provided in relation to original goods or in relation to technology relating to original goods—the original goods;

Section 31

- 1 (ii) if the defence services are provided in relation to
2 incorporated goods—any of the original goods
3 incorporated in the incorporated goods.

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

6 Note: See also section 35 (about transition to the Defense Trade Cooperation
7 Treaty).

8 *Exception—regulations*

- 9 (7) Subsection (1), (2), (3), (4), (5) or (6) does not apply in the
10 circumstances prescribed by the regulations for the purposes of this
11 subsection.

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

14 *Notice approving supply or provision of defence services*

- 15 (8) The Minister may, by notice given to an Australian Community
16 member, approve one or more supplies, or approve the provision of
17 one or more defence services, specified in the notice.

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

19 *Geographical jurisdiction*

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

22 *Notice not a legislative instrument*

- 23 (10) A notice under subsection (8) is not a legislative instrument.

24 *Definition*

- 25 (11) In this section:

26 *place* includes:

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

32 US Defence Articles exempt from the scope of the Defense Trade Cooperation Treaty*Dealings in US Defence Articles prior to authorisation*

- (1) An Australian Community member commits an offence if:
- (a) the member supplies goods or supplies technology relating to goods; and
 - (b) the supply is of goods that are an Article 3(1) US Defence Article or an Article 3(3) US Defence Article or the supply is of technology relating to original goods; and
 - (c) at the time of the supply, the following is listed in Part 2 of the Defense Trade Cooperation Munitions List:
 - (i) if the supply is of original goods or is of technology relating 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
 - (d) at the time of the supply, there is neither a licence or other authorisation granted by the Government of the United States of America, nor a notice under subsection (4), in force in relation to the Australian Community member and in relation to:
 - (i) if the supply is of original goods—the original goods; or
 - (ii) if the supply is of incorporated goods—each of the original goods incorporated in the incorporated goods and listed as described in subparagraph (c)(ii); or
 - (iii) if the supply is of technology relating to original goods—the technology.

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

Note: See also section 35 (about transition to the Defense Trade Cooperation Treaty).

- (2) An Australian Community member commits an offence if:
- (a) the member provides defence services in relation to goods or in relation to technology relating to goods; and

Section 32

- 1 (b) the defence services are provided in relation to goods that are
2 an Article 3(1) US Defence Article or an Article 3(3) US
3 Defence Article or the defence services are provided in
4 relation to technology relating to original goods; and
5 (c) at the time of the provision of the defence services, the
6 following is listed in Part 2 of the Defense Trade Cooperation
7 Munitions List:
8 (i) if the defence services are provided in relation to
9 original goods or in relation to technology relating to
10 original goods—the original goods;
11 (ii) if the defence services are provided in relation to
12 incorporated goods—any of the original goods
13 incorporated in the incorporated goods; and
14 (d) at the time of the provision of the defence services, there is
15 neither a licence or other authorisation granted by the
16 Government of the United States of America, nor a notice
17 under subsection (4), in force in relation to the Australian
18 Community member and in relation to:
19 (i) if the defence service are provided in relation to original
20 goods—the original goods; or
21 (ii) if the defence services are provided in relation to
22 incorporated goods—each of the original goods
23 incorporated in the incorporated goods and listed as
24 described in subparagraph (c)(ii); or
25 (iii) if the defence services are provided in relation to
26 technology relating to original goods—the technology.

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

29 Note: See also section 35 (about transition to the Defense Trade Cooperation
30 Treaty).

31 *Control of US Defence Articles after authorisation*

- 32 (3) An Australian Community member commits an offence if:
33 (a) the member has goods, or technology relating to goods, in the
34 member's possession, custody or control; and
35 (b) the goods in the member's possession, custody or control are
36 an Article 3(1) US Defence Article or an Article 3(3) US

- 1 Defence Article or the technology in the member's
2 possession, custody or control is technology relating to
3 original goods; and
4 (c) the following is listed in Part 2 of the Defense Trade
5 Cooperation Munitions List:
6 (i) if the goods in the member's possession, custody or
7 control are original goods or the technology in the
8 member's possession, custody or control is technology
9 relating to original goods—the original goods;
10 (ii) if the goods in the member's possession, custody or
11 control are incorporated goods—any of the original
12 goods incorporated in the incorporated goods; and
13 (d) a notice under subsection (4) is in force in relation to the
14 Australian Community member and in relation to:
15 (i) if the goods in the member's possession, custody or
16 control are original goods—the original goods; or
17 (ii) if the goods in the member's possession, custody or
18 control are incorporated goods—any of the original
19 goods incorporated in the incorporated goods; or
20 (iii) if the technology in the member's possession, custody
21 or control is technology relating to original goods—the
22 technology; and
23 (e) the Australian Community member contravenes a condition
24 specified in the notice.

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

27 Note: See also section 35 (about transition to the Defense Trade Cooperation
28 Treaty).

29 *Notices*

- 30 (4) The Minister may give an Australian Community member a notice
31 in relation to:
32 (a) specified goods; or
33 (b) specified technology relating to specified goods.

34 The notice may specify one or more conditions that apply in
35 relation to the Australian Community member and the goods

Part 3 Defense Trade Cooperation Treaty

Division 3 Main offences

Section 32

1 referred to in paragraph (a) or the technology referred to in
2 paragraph (b).

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

4 *Geographical jurisdiction*

5 (5) Section 15.4 of the *Criminal Code* (extended geographical
6 jurisdiction—category D) applies to an offence against this section.

7 *Notice not a legislative instrument*

8 (6) A notice under subsection (4) is not a legislative instrument.
9

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2 **Division 4—Ministerial directions**

3 **33 Ministerial directions—avoiding prejudice to the security,**
4 **defence or international relations of Australia**

- 5 (1) The Minister may, by writing, direct all Australian Community
6 members not to:
- 7 (a) supply to a specified member of the United States
8 Community goods listed in the Defence and Strategic Goods
9 List, or technology relating to such goods, that are neither an
10 Article 3(1) US Defence Article nor an Article 3(3) US
11 Defence Article; and
 - 12 (b) provide to a specified member of the United States
13 Community defence services in relation to goods listed in the
14 Defence and Strategic Goods List, or in relation to
15 technology relating to such goods, that are neither an Article
16 3(1) US Defence Article nor an Article 3(3) US Defence
17 Article.
- 18 (2) The Minister may give a direction under subsection (1) only if the
19 Minister is satisfied that it is necessary to do so in order to avoid
20 prejudice to the security, defence or international relations of
21 Australia.

22 *Revocation*

- 23 (3) The Minister may, by writing, revoke a direction under
24 subsection (1).

25 *Notice to approval holders*

- 26 (4) The Minister must give each person who holds an approval under
27 section 27 notice of the following:
- 28 (a) a direction under subsection (1);
 - 29 (b) a revocation under subsection (3).

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

Section 33

1 *Publication*

- 2 (5) The Minister must publish the following on the Department's
3 website:
4 (a) a direction under subsection (1);
5 (b) a revocation under subsection (3).

6 *Offence*

- 7 (6) An Australian Community member commits an offence if:
8 (a) the member supplies goods or technology relating to goods or
9 provides defence services in relation to goods or in relation to
10 technology relating to goods; and
11 (b) the supply, or the provision of the defence services,
12 contravenes a direction that is in force under subsection (1);
13 and
14 (c) the member knows of the contravention; and
15 (d) there is no notice in force under subsection (7) in relation to
16 the member and the supply or the provision of the defence
17 services (as the case may be).

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

20 *Notice approving supply or provision of defence services*

- 21 (7) The Minister may, by notice given to an Australian Community
22 member, approve one or more supplies, or approve the provision of
23 one or more defence services, specified in the notice.

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

25 *Geographical jurisdiction*

- 26 (8) Section 15.4 of the *Criminal Code* (extended geographical
27 jurisdiction—category D) applies to an offence against
28 subsection (6).

29 *Non-legislative instruments*

- 30 (9) The following are not legislative instruments:

- 1 (a) a direction under subsection (1);
2 (b) a notice under subsection (7).

3 **34 Ministerial directions—suspension or cancellation of approvals**

4 *Suspension of approvals*

- 5 (1) If under Division 2 the Minister suspends an approval given to a
6 person under section 27, the Minister may give the person a notice
7 directing the person to:
8 (a) take specified action; or
9 (b) refrain from taking specified action;
10 in relation to either or both of the following:
11 (c) Article 3(1) US Defence Articles or Article 3(3) US Defence
12 Articles in the person's possession, custody or control at the
13 time the suspension takes effect;
14 (d) technology relating to original goods, being technology in the
15 person's possession, custody or control at the time the
16 suspension takes effect.

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

- 18 (2) A notice given to a person under subsection (1) comes into force at
19 the time the person receives the notice.
20 (3) A notice given to a person under subsection (1) ceases to be in
21 force once the suspension ceases to have effect.

22 *Cancellation of approvals*

- 23 (4) If under Division 2 the Minister cancels an approval given to a
24 person under section 27, the Minister may give the person a notice
25 directing the person to:
26 (a) take specified action; or
27 (b) refrain from taking specified action;
28 in relation to either or both of the following:
29 (c) Article 3(1) US Defence Articles or Article 3(3) US Defence
30 Articles in the person's possession, custody or control at the
31 time the cancellation takes effect;

Section 34

1 (d) technology relating to original goods, being technology in the
2 person's possession, custody or control at the time the
3 cancellation takes effect.

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

5 (5) A notice given to a person under subsection (4) comes into force at
6 the time the person receives the notice.

7 (6) The Minister may, by writing, revoke a notice given to a person
8 under subsection (4).

9 (7) The Minister must give the person notice of the revocation. The
10 revocation takes effect at the time the person receives the notice.

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

12 *Offence*

13 (8) A person commits an offence if:

14 (a) a notice given to the person under subsection (1) or (4) is in
15 force; and

16 (b) the person fails to comply with the notice.

17 Penalty: 12,500 penalty units.

18 (9) Section 15.2 of the *Criminal Code* (extended geographical
19 jurisdiction—category B) applies to an offence against
20 subsection (8).

21 *Notice not a legislative instrument*

22 (10) A notice under subsection (1) or (4) is not a legislative instrument.
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2 **Division 5—Other matters**

3 **35 Transition to the Defense Trade Cooperation Treaty**

4 (1) This section applies if:

- 5 (a) a person who is an Australian Community member received
6 (at any time before or after the person became an Australian
7 Community member) goods (the *transition goods*), or
8 technology (the *transition technology*) relating to goods,
9 from a member of the United States Community; and
10 (b) the member of the United States Community provided the
11 goods or technology under a licence or other authorisation
12 granted by the Government of the United States of America;
13 and
14 (c) the person applies to the Minister for a notice under
15 subsection (2).

16 Note: Section 66 sets out application requirements.

17 *Approving transition to Treaty*

- 18 (2) If a person makes an application under subsection (1) in
19 accordance with section 66 and the Minister is satisfied that the
20 requirements prescribed by the regulations for the purposes of this
21 subsection are satisfied in relation to the person, the Minister may
22 give the person a notice specifying one or more of the following:
23 (a) the transition goods are taken to be an Article 3(1) US
24 Defence Article within the meaning of subsection 5(1);
25 (b) the transition goods are taken to be an Article 3(3) US
26 Defence Article within the meaning of subsection 5(4);
27 (c) the transition technology is taken to be technology relating to
28 an Article 3(1) US Defence Article within the meaning of
29 subsection 5(1);
30 (d) the transition technology is taken to be technology relating to
31 an Article 3(3) US Defence Article within the meaning of
32 subsection 5(4).

Part 3 Defense Trade Cooperation Treaty

Division 5 Other matters

Section 36

1 Note 1: Goods incorporating transition goods are also an Article 3(1) US
2 Defence Article or an Article 3(3) US Defence Article: see
3 subsections 5(2) and (5).

4 Note 2: Section 67 deals with giving notices under this Act.

5 (3) A notice given to a person under subsection (2) comes into force at
6 the time the person receives the notice.

7 (4) A notice under subsection (2) has effect according to its terms.

8 *Refusing to approve transition to Treaty*

9 (5) If the Minister refuses to give the person a notice under
10 subsection (2), the Minister must give the person notice of the
11 refusal and the reasons for the refusal.

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

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

14 *Notice not a legislative instrument*

15 (6) A notice under subsection (2) is not a legislative instrument.

16 **36 Defense Trade Cooperation Munitions List**

17 (1) The Minister must make a document to be known as the Defense
18 Trade Cooperation Munitions List.

19 (2) The document must contain 2 Parts.

20 (3) Part 1 is to contain a list of goods that are within the scope of the
21 Defense Trade Cooperation Treaty. The goods listed in Part 1 must
22 be either or both of the following:

23 (a) goods listed in the Defence and Strategic Goods List;

24 (b) goods listed in the United States Munitions List referred to in
25 Article 1(1)(n) of the Defense Trade Cooperation Treaty.

26 (4) Part 2 is to contain a list of goods that are exempt from the scope
27 of the Defense Trade Cooperation Treaty.

28 (5) The document made under subsection (1) is a legislative
29 instrument, but section 42 (disallowance) of the *Legislative*
30 *Instruments Act 2003* does not apply to the document.
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2 **Part 4—Monitoring powers**

3 **Division 1—Preliminary**

4 **37 Simplified outline**

5 The following is a simplified outline of this Part:

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- If a person holds an approval under section 27, an authorised officer may enter certain premises at any reasonable time of day for the purpose of finding out whether the person has complied with Part 3 or 6 or a condition of the approval.
- The authorised officer must give the person at least 24 hours' notice of the officer's intention to enter the premises.
- An authorised officer who enters premises may exercise monitoring powers. The authorised officer may be assisted by other persons if that assistance is necessary and reasonable.

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38 No limit on section 71

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This Part does not limit section 71 (forfeiture).

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2 **Division 2—Appointment of authorised officers and issue**
3 **of identity cards**

4 **39 Appointment of authorised officers**

- 5 (1) The Secretary may, in writing, appoint any of the following
6 persons as an authorised officer for the purposes of this Part:
7 (a) a member of the Australian Defence Force who holds the
8 rank of warrant officer or a higher rank;
9 (b) an APS employee who holds an APS 6 position, or an
10 equivalent or higher position, in the Department.
- 11 (2) The Secretary must not appoint a person as an authorised officer
12 unless the Secretary is satisfied that the person has suitable
13 qualifications and experience to properly exercise the powers of an
14 authorised officer.
- 15 (3) An authorised officer must, in performing functions or exercising
16 powers as an authorised officer, comply with any directions of the
17 Secretary.
- 18 (4) If a direction is given under subsection (3) in writing, the direction
19 is not a legislative instrument.

20 **40 Identity cards**

- 21 (1) The Secretary must issue an identity card to an authorised officer.

22 *Form of identity card*

- 23 (2) The identity card must:
24 (a) be in the form prescribed by the regulations; and
25 (b) contain the information prescribed by the regulations; and
26 (c) contain a recent photograph of the authorised officer.

27 *Offence*

- 28 (3) A person commits an offence if:
-

- 1 (a) the person has been issued with an identity card; and
2 (b) the person ceases to be an authorised officer; and
3 (c) the person does not, within 7 days of so ceasing, return the
4 identity card to the Secretary.

5 Penalty: 5 penalty units.

6 Note: Section 14.1 of the *Criminal Code* (standard geographical jurisdiction)
7 applies to an offence against subsection (3).

8 (4) An offence against subsection (3) is an offence of strict liability.

9 Note: For strict liability, see section 6.1 of the *Criminal Code*.

10 (5) Subsection (3) does not apply if the identity card was lost or
11 destroyed.

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

14 *Authorised officer must carry card*

15 (6) An authorised officer must carry his or her identity card at all times
16 when performing functions or exercising powers as an authorised
17 officer.
18

Section 41

1

2 **Division 3—Powers of authorised officers**

3 **41 Authorised officer may enter premises**

- 4 (1) If a person holds an approval under section 27, then, for the
5 purpose of finding out whether the person has complied with Part 3
6 or 6 or a condition of the approval, an authorised officer may:
- 7 (a) enter the following premises at any reasonable time of day:
- 8 (i) any premises the person specified in the application for
9 approval as premises at which Article 3(1) US Defence
10 Articles or Article 3(3) US Defence Articles may be
11 kept;
- 12 (ii) any premises the person subsequently informs the
13 Minister in writing are premises at which Article 3(1)
14 US Defence Articles or Article 3(3) US Defence
15 Articles are being, or may be, kept;
- 16 (iii) any premises in Australia used, wholly or partly, by the
17 person for the purposes of business operations of the
18 person, except premises used as a place of residence;
19 and
- 20 (b) exercise the monitoring powers set out in section 42.
- 21 (2) However, an authorised officer must not enter premises under
22 subsection (1) unless the officer has given the holder of the
23 approval at least 24 hours' notice of the officer's intention to do so.

24 **42 Monitoring powers of authorised officers**

- 25 (1) The following are the *monitoring powers* that an authorised officer
26 may exercise in relation to premises under section 41:
- 27 (a) the power to search the premises and any thing on the
28 premises;
- 29 (b) the power to inspect, examine, take measurements of or
30 conduct tests on any thing on the premises;
- 31 (c) the power to make any still or moving image or any
32 recording of the premises or any thing on the premises;
- 33 (d) the power to inspect any document on the premises;

- 1 (e) the power to make copies of any such document;
2 (f) the power to take onto the premises such equipment and
3 materials as the authorised officer requires for the purpose of
4 exercising powers set out in this section in relation to the
5 premises;
6 (g) the powers set out in subsections (2), (3) and (5).

7 *Powers relating to electronic equipment*

- 8 (2) The monitoring powers include the power to operate electronic
9 equipment on the premises to see whether:
10 (a) the equipment; or
11 (b) a disk, tape or other storage device that:
12 (i) is on the premises; and
13 (ii) can be used with the equipment or is associated with it;
14 contains information that is relevant to finding out whether the
15 holder of the approval concerned has complied with Part 3 or 6 or a
16 condition of the approval.
- 17 (3) The monitoring powers include the following powers in relation to
18 information described in subsection (2) found in the exercise of the
19 power under that subsection:
20 (a) the power to operate electronic equipment on the premises to
21 put the information in documentary form and remove the
22 documents so produced from the premises;
23 (b) the power to operate electronic equipment on the premises to
24 transfer the information to a disk, tape or other storage device
25 that:
26 (i) is brought to the premises for the exercise of the power;
27 or
28 (ii) is on the premises and the use of which for that purpose
29 has been agreed in writing by the occupier of the
30 premises or another person who apparently represents
31 the occupier;
32 and remove the disk, tape or other storage device from the
33 premises.
- 34 (4) An authorised officer may operate electronic equipment as
35 mentioned in subsection (2) or (3) only if he or she believes on
-

Section 43

1 reasonable grounds that the operation of the equipment can be
2 carried out without damage to the equipment.

3 *Securing things*

- 4 (5) The monitoring powers include the power to secure a thing for a
5 period not exceeding 24 hours if:
6 (a) the thing is found during the exercise of monitoring powers
7 on the premises; and
8 (b) an authorised officer believes on reasonable grounds that:
9 (i) the thing affords evidence of the commission of an
10 offence against Part 3 or 6; and
11 (ii) it is necessary to secure the thing in order to prevent it
12 from being concealed, lost or destroyed before a warrant
13 to seize the thing is obtained; and
14 (iii) the circumstances are serious and urgent.

15 Note: The *Crimes Act 1914* contains provisions allowing the issue of
16 warrants to seize things.

17 **43 Authorised officer may require person to answer questions or**
18 **produce documents**

19 *Requirement to answer questions*

- 20 (1) If:
21 (a) an authorised officer enters premises under section 41; and
22 (b) the authorised officer believes on reasonable grounds that a
23 person present at the premises is capable of answering a
24 question relating to whether the holder of the approval
25 concerned has complied with Part 3 or 6 or a condition of the
26 approval;
27 the authorised officer may require the person to answer the
28 question put by the authorised officer.

29 *Requirement to produce documents*

- 30 (2) If:
31 (a) an authorised officer enters premises under section 41; and

- 1 (b) the authorised officer believes on reasonable grounds that a
2 person present at the premises is capable of producing a
3 document relating to whether the holder of the approval
4 concerned has complied with Part 3 or 6 or a condition of the
5 approval;
6 the authorised officer may require the person to produce the
7 document requested by the authorised officer.

8 *Offence*

- 9 (3) A person commits an offence if:
10 (a) the person is subject to a requirement under subsection (1) or
11 (2); and
12 (b) the person fails to comply with the requirement.

13 Penalty for contravention of this subsection: Imprisonment for 6
14 months.

15 Note: Section 14.1 of the *Criminal Code* (standard geographical jurisdiction)
16 applies to an offence against subsection (3).

17 **44 Self-incrimination**

- 18 (1) A person is not excused from answering a question or producing a
19 document under section 43 on the ground that the answer to the
20 question or the production of the document might tend to
21 incriminate the person or expose the person to a penalty.
- 22 (2) However, in the case of an individual:
23 (a) the answer given or the document produced; and
24 (b) answering the question or producing the document; and
25 (c) any information, document or thing obtained as a direct or
26 indirect consequence of the answering of the question or
27 producing the document;
28 are not admissible in evidence against the individual in criminal
29 proceedings other than:
30 (d) proceedings for an offence against subsection 43(3); or
31 (e) proceedings for an offence against section 137.1 or 137.2 of
32 the *Criminal Code* that relates to this Part.
33

Part 4 Monitoring powers

Division 4 Obligations of authorised officers

Section 45

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2 **Division 4—Obligations of authorised officers**

3 **45 Announcement before entry**

4 Before entering premises under section 41, an authorised officer
5 must:

6 (a) announce that he or she is authorised to enter the premises;
7 and

8 (b) show his or her identity card to the occupier of the premises,
9 or to another person who apparently represents the occupier,
10 if the occupier or other person is present at the premises.

11 **46 Occupier to be informed of rights and responsibilities**

12 If:

13 (a) one or more authorised officers enter premises under
14 section 41; and

15 (b) the occupier of the premises, or another person who
16 apparently represents the occupier, is present at the premises;

17 one of those officers must, as soon as practicable, inform the
18 occupier or other person of the rights and responsibilities of the
19 occupier or other person under Division 5.
20

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2 **Division 5—Occupier's rights and responsibilities**

3 **47 Occupier entitled to observe search**

- 4 (1) If an authorised officer enters premises under section 41 and the
5 occupier of the premises, or another person who apparently
6 represents the occupier, is present at the premises, the occupier or
7 other person is entitled to observe the search being conducted.
- 8 (2) The right to observe the search being conducted ceases if the
9 occupier or other person impedes the search.
- 10 (3) This section does not prevent 2 or more areas of the premises being
11 searched at the same time.

12 **48 Occupier to provide authorised officer with facilities and**
13 **assistance**

- 14 (1) The occupier of premises entered under section 41, or another
15 person who apparently represents the occupier, must provide:
16 (a) an authorised officer exercising monitoring powers; and
17 (b) any person assisting the authorised officer;
18 with all reasonable facilities and assistance for the effective
19 exercise of their powers.
- 20 (2) A person commits an offence if:
21 (a) the person is subject to subsection (1); and
22 (b) the person fails to comply with that subsection.
- 23 Penalty for contravention of this subsection: 30 penalty units.
- 24 Note: Section 14.1 of the *Criminal Code* (standard geographical jurisdiction)
25 applies to an offence against subsection (2).
26

1

2 **Division 6—Other matters**

3 **49 Tampering etc. with things secured**

4 A person commits an offence if:

- 5 (a) a thing has been secured under subsection 42(5); and
6 (b) the person tampers or interferes with, or destroys, the thing.

7 Penalty: Imprisonment for 6 months.

8 Note: Section 14.1 of the *Criminal Code* (standard geographical jurisdiction)
9 applies to an offence against this section.

10 **50 Persons assisting authorised officers**

11 *Authorised officers may be assisted by other persons*

- 12 (1) An authorised officer may, in entering premises under section 41
13 and in exercising monitoring powers in relation to the premises, be
14 assisted by other persons if that assistance is necessary and
15 reasonable. A person giving such assistance is a **person assisting**
16 the authorised officer.

17 *Powers of a person assisting the authorised officer*

- 18 (2) A person assisting the authorised officer may:
19 (a) enter the premises; and
20 (b) exercise monitoring powers in relation to the premises, but
21 only in accordance with a direction given to the person by the
22 authorised officer.
- 23 (3) A power exercised by a person assisting the authorised officer as
24 mentioned in subsection (2) is taken for all purposes to have been
25 exercised by the authorised officer.
- 26 (4) If a direction is given under paragraph (2)(b) in writing, the
27 direction is not a legislative instrument.

51 Compensation for damage to electronic equipment

- 1
- 2 (1) This section applies if:
- 3 (a) as a result of electronic equipment being operated as
- 4 mentioned in this Part:
- 5 (i) damage is caused to the equipment; or
- 6 (ii) the data recorded on the equipment is damaged; or
- 7 (iii) programs associated with the use of the equipment, or
- 8 with the use of the data, are damaged or corrupted; and
- 9 (b) the damage or corruption occurs because:
- 10 (i) insufficient care was exercised in selecting the person
- 11 who was to operate the equipment; or
- 12 (ii) insufficient care was exercised by the person operating
- 13 the equipment.
- 14 (2) The Commonwealth must pay the owner of the equipment, or the
- 15 user of the data or programs, such reasonable compensation for the
- 16 damage or corruption as the Commonwealth and the owner or user
- 17 agree on.
- 18 (3) However, if the owner or user and the Commonwealth fail to
- 19 agree, the owner or user may institute proceedings in the Federal
- 20 Court of Australia for such reasonable amount of compensation as
- 21 the Court determines.
- 22 (4) In determining the amount of compensation payable, regard is to
- 23 be had to whether the occupier of the premises, or the occupier's
- 24 employees and agents, if they were available at the time, provided
- 25 any appropriate warning or guidance on the operation of the
- 26 equipment.
- 27 (5) In this section:
- 28 **damage**, in relation to data, includes damage by erasure of data or
- 29 addition of other data.
- 30

Section 52

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Part 5—Information-gathering powers

4

52 Secretary may obtain information and documents

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Scope

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- (1) This section applies to a person if the Secretary believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Act.

9

Requirement

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- (2) The Secretary may, by notice given to the person, require the person:
- (a) to give to the Secretary, within the period and in the manner specified in the notice, any such information; or
 - (b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.

19

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

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- (3) The period specified in a notice given under subsection (2) must be at least 14 days after the notice is given.

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- (4) A notice under subsection (2) must set out the effect of the following provisions:
- (a) subsection (5);
 - (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);
 - (c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

29

Offence

30

- (5) A person commits an offence if:

- 1 (a) the person is given a notice under subsection (2); and
2 (b) the person fails to comply with the notice.

3 Penalty: Imprisonment for 6 months.

- 4 (6) Section 15.2 of the *Criminal Code* (extended geographical
5 jurisdiction—category B) applies to an offence against
6 subsection (5).

7 **53 Copying documents—compensation**

8 A person is entitled to be paid by the Secretary, on behalf of the
9 Commonwealth, reasonable compensation for complying with a
10 requirement covered by paragraph 52(2)(c).

11 **54 Secretary may inspect and copy original documents**

12 The Secretary may:

- 13 (a) inspect a document produced under paragraph 52(2)(b); and
14 (b) make and retain copies of the whole or a part of such a
15 document.

16 **55 Secretary may retain copies of documents**

17 The Secretary may inspect, and retain possession of, a copy of a
18 document produced under paragraph 52(2)(c).

19 **56 Secretary may retain original documents**

- 20 (1) The Secretary may take, and retain for as long as is reasonably
21 necessary, possession of a document produced under paragraph
22 52(2)(b).
- 23 (2) The person otherwise entitled to possession of the document is
24 entitled to be supplied, as soon as practicable, with a copy certified
25 by the Secretary to be a true copy.
- 26 (3) The certified copy must be received in all courts and tribunals as
27 evidence as if it were the original.

Section 57

- 1 (4) Until a certified copy is supplied, the Secretary must, at such times
2 and places as the Secretary thinks appropriate, permit the person
3 otherwise entitled to possession of the document, or a person
4 authorised by that person, to inspect and make copies of the
5 document.

6 **57 Self-incrimination**

- 7 (1) A person is not excused from giving information or producing a
8 document under section 52 on the ground that the information or
9 the production of the document might tend to incriminate the
10 person or expose the person to a penalty.
- 11 (2) However, in the case of an individual:
- 12 (a) the information given or the document produced; and
13 (b) giving the information or producing the document; and
14 (c) any information, document or thing obtained as a direct or
15 indirect consequence of giving the information or producing
16 the document;
- 17 are not admissible in evidence against the individual in criminal
18 proceedings other than:
- 19 (d) proceedings for an offence against subsection 52(5); or
20 (e) proceedings for an offence against section 137.1 or 137.2 of
21 the *Criminal Code* that relates to this Part.
22

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Part 6—Record-keeping

2

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58 Making and retaining records

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Permit holders under Part 2

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- (1) A person must make a separate record of each activity that the person does under a permit given to the person under section 11. The person must make the record within 7 days of doing the activity.

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- (2) A person must make a separate record of each arrangement that the person makes under a permit given to the person under section 16. The person must make the record within 7 days of making the arrangement.

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Approval holders under section 27

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- (3) A person who holds an approval under section 27 must make a separate record of each activity that the person does that is prescribed by the regulations for the purposes of this subsection. The person must make the record within 7 days of doing the activity.

16

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Form of record

21

- (4) A record under this section must contain the information prescribed by the regulations for the purposes of this subsection. The regulations may prescribe different information for different kinds of records.

22

23

24

25

Retention of record

26

- (5) The person must retain the record for 5 years after making it.

27

Offence

28

- (6) A person commits an offence if:

Section 59

- 1 (a) the person is required to make or retain a record in
2 accordance with this section; and
3 (b) the person does not make or retain the record in accordance
4 with this section.

5 Penalty: 30 penalty units.

- 6 (7) An offence against subsection (6) is an offence of strict liability.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 8 (8) Section 15.4 of the *Criminal Code* (extended geographical
9 jurisdiction—category D) applies to an offence against
10 subsection (6).

11 **59 Production of records**

- 12 (1) The Secretary may, by notice given to a person who is required to
13 make records under section 58, require the person to produce to the
14 Secretary, within the period and in the manner specified in the
15 notice, such of those records as are specified in the notice.

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

- 17 (2) The period specified in a notice given under subsection (1) must be
18 at least 14 days after the notice is given.

- 19 (3) A notice under subsection (1) must set out the effect of the
20 following provisions:

- 21 (a) subsection (4);
22 (b) section 137.1 of the *Criminal Code* (about giving false or
23 misleading information);
24 (c) section 137.2 of the *Criminal Code* (about producing false or
25 misleading documents).

26 *Offence*

- 27 (4) A person commits an offence if:
28 (a) the person is given a notice under subsection (1); and
29 (b) the person fails to comply with the notice.

30 Penalty: Imprisonment for 6 months.

- 1 (5) Section 15.4 of the *Criminal Code* (extended geographical
2 jurisdiction—category D) applies to an offence against
3 subsection (4).

4 **60 Secretary may inspect and copy records**

5 The Secretary may inspect a record produced under this Part and
6 may make and retain copies of the whole or a part of the record.

7 **61 Secretary may retain records**

- 8 (1) The Secretary may take, and retain for as long as is reasonably
9 necessary, possession of a record produced under this Part.
- 10 (2) The person otherwise entitled to possession of the record is entitled
11 to be supplied, as soon as practicable, with a copy certified by the
12 Secretary to be a true copy.
- 13 (3) The certified copy must be received in all courts and tribunals as
14 evidence as if it were the original.
- 15 (4) Until a certified copy is supplied, the Secretary must, at such times
16 and places as the Secretary thinks appropriate, permit the person
17 otherwise entitled to possession of the record, or a person
18 authorised by that person, to inspect and make copies of the record.

19 **62 Self-incrimination**

- 20 (1) A person is not excused from producing a record under this Part on
21 the ground that the production of the record might tend to
22 incriminate the person or expose the person to a penalty.
- 23 (2) However, in the case of an individual:
24 (a) the record; and
25 (b) producing the record; and
26 (c) any information, document or thing obtained as a direct or
27 indirect consequence of producing the record;
28 are not admissible in evidence against the individual in criminal
29 proceedings other than:

Part 6 Record-keeping

Section 62

- 1 (d) proceedings for an offence against subsection 58(6) or 59(4);
2 or
3 (e) proceedings for an offence against section 137.1 or 137.2 of
4 the *Criminal Code* that relates to this Part.
5

Part 7—Review of decisions

63 Reviewable decisions

For the purposes of this Part, each of the following decisions of the Minister is a *reviewable decision*:

- (a) a decision under section 11 to refuse to give a person a permit for an activity covered by the person's application for a permit;
- (b) a decision under section 11 to revoke a permit;
- (c) a decision under subsection 11(7) or 12(1) to impose a permit condition or a decision under subsection 12(2) to vary a permit condition;
- (d) a decision under section 16 to refuse to give a person a permit for an arrangement covered by the person's application for a permit;
- (e) a decision under section 16 to revoke a permit;
- (f) a decision under subsection 16(7) or 17(1) to impose a permit condition or a decision under subsection 17(2) to vary a permit condition;
- (g) a decision under section 20 to refuse to register a person as a broker;
- (h) a decision under section 21 to refuse to renew a person's registration as a broker;
- (i) a decision under subsection 20(7) or 22(1) to impose a registration condition or a decision under subsection 22(2) to vary a registration condition;
- (j) a decision under section 23 to cancel a person's registration as a broker;
- (k) a decision under section 27 to refuse to approve a person as a member of the Australian Community;
- (l) a decision under paragraph 28(1)(a) or subsection 28(2) to impose an approval condition or a decision under subsection 28(3) to vary an approval condition;
- (m) a decision under section 29 to suspend an approval;

Section 64

- 1 (n) a decision under section 30 to cancel an approval;
2 (o) a decision under section 35 to refuse to give a person a notice
3 under subsection 35(2).

4 **64 Internal review by Minister of reviewable decisions**

5 *Scope*

- 6 (1) This section applies to a reviewable decision if the decision is
7 made by a delegate of the Minister.

8 *Request for review*

- 9 (2) A person affected by a reviewable decision who is dissatisfied with
10 the decision may request the Minister to review the decision.
11 (3) The request must be made by written notice given to the Minister
12 within 30 days, or such longer period as the Minister allows (either
13 before or after the end of the 30 days), after the day on which the
14 person is informed of the decision.
15 (4) The request must set out the reasons it is made.

16 *Review of reviewable decision*

- 17 (5) On receiving the person's request, the Minister must review the
18 reviewable decision personally.
19 (6) The Minister may:
20 (a) affirm, vary or set aside the reviewable decision; and
21 (b) if he or she sets aside the decision, make such other decision
22 as he or she thinks appropriate.

23 *Notice of decision*

- 24 (7) The Minister must give the person notice of the decision under
25 subsection (6), of the reasons for that decision and of the person's
26 right to have that decision reviewed by the Administrative Appeals
27 Tribunal. Failure to give notice does not affect the validity of that
28 decision.

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

Section 65

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

2 *Affirmation of reviewable decision by operation of law*

3 (8) The Minister is taken, under this section, to have affirmed the
4 reviewable decision if the person does not receive notice of the
5 Minister's decision on the review of the reviewable decision within
6 90 days after the person requested the Minister to review the
7 reviewable decision.

8 **65 Review by the Administrative Appeals Tribunal**

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

- 11 (a) a reviewable decision made by the Minister personally; or
12 (b) a decision made by the Minister under section 64.
13

1

2 **Part 8—Other matters**

3

4 **66 Applications under Part 2 or 3**

- 5 (1) An application under a provision of Part 2 or 3 must:
- 6 (a) be in the form approved by the Minister for the purposes of
- 7 that provision; and
- 8 (b) contain the information required by the form; and
- 9 (c) be accompanied by any documents that the form requires;
- 10 and
- 11 (d) be accompanied by the fee (if any) prescribed by the
- 12 regulations.
- 13 (2) The Minister may request an applicant to give the Minister such
- 14 additional information as the Minister considers necessary to
- 15 enable the Minister to decide the application.
- 16 (3) The Minister may approve in writing a form for the purposes of a
- 17 provision of Part 2 or 3.

18 **67 Notices, permits and approvals under this Act**

- 19 (1) A notice, permit or approval required or permitted by this Act to be
- 20 given to a person must be given to the person by one of the
- 21 methods prescribed by the regulations.
- 22 (2) If a notice, permit or approval is given to a person under this Act
- 23 by one of those methods, then, for the purposes of this Act, the
- 24 person is taken to have received the notice, permit or approval at
- 25 the time prescribed by, or worked out in accordance with, the
- 26 regulations.
- 27 (3) This section has effect despite any provision in the *Electronic*
- 28 *Transactions Act 1999*.

68 Disclosure of reasons for decisions*Decisions made by the Minister personally*

(1) If:

(a) a decision under this Act is made by the Minister personally;
and

(b) reasons for the decision must be given in a notice under this
Act;

the notice must not disclose any reasons whose disclosure the
Minister believes would prejudice the security, defence or
international relations of Australia.

Decisions made by delegates of the Minister

(2) If:

(a) a decision under this Act is made by a delegate of the
Minister under a delegation under section 73; and

(b) reasons for the decision must be given in a notice under this
Act; and

(c) the delegate believes that the disclosure of some or all of the
reasons would prejudice the security, defence or international
relations of Australia;

then:

(d) the delegate must refer the particular case to the Minister;
and

(e) if the Minister believes that the disclosure of some or all of
the reasons would prejudice the security, defence or
international relations of Australia—the Minister must
inform the delegate of those reasons and the notice must not
disclose those reasons.

Notification

(3) If reasons are not disclosed in a notice under this Act because of
subsection (1) or (2), that fact must be stated in the notice.

Section 69

1 **69 Disclosure of information and documents**

2 (1) The Secretary may disclose any information, or give any
3 document, obtained or generated for the purposes of this Act, to
4 any of the following for a purpose connected with the
5 administration of this Act (including the performance of a function,
6 or the exercise of a power, under this Act):

- 7 (a) a Minister of the Commonwealth, a State or a Territory;
8 (b) the head (however described) of a Commonwealth entity;
9 (c) a State or Territory entity;
10 (d) a foreign government entity;
11 (e) a person or entity specified in an instrument under
12 subsection (2).

13 (2) The Minister may, by legislative instrument, specify a person or
14 entity for the purposes of paragraph (1)(e).

15 (3) The Secretary may disclose information under subsection (1) only
16 if the Secretary is satisfied that the recipient of the information will
17 not disclose the information to anyone else without the Secretary's
18 consent.

19 (4) The Secretary may give a document under subsection (1) only if
20 the Secretary is satisfied that the recipient of the document will not
21 disclose any of the contents of the document to anyone else
22 without the Secretary's consent.

23 *Relationship with other laws*

- 24 (5) Subsection (1) applies despite:
25 (a) a law of the Commonwealth other than this section; and
26 (b) a law of a State or a Territory.

27 *Definitions*

28 (6) In this section:

- 1 **Commonwealth entity** means:
- 2 (a) an Agency (within the meaning of the *Financial*
- 3 *Management and Accountability Act 1997*); or
- 4 (b) a Commonwealth authority (within the meaning of the
- 5 *Commonwealth Authorities and Companies Act 1997*).

- 6 **foreign government entity** means:
- 7 (a) the government of a foreign country or of part of a foreign
- 8 country; or
- 9 (b) an authority of the government of a foreign country; or
- 10 (c) an authority of the government of part of a foreign country.

- 11 **State or Territory entity** means:
- 12 (a) a State or Territory; or
- 13 (b) an authority of a State or Territory.

14 **70 Injunctions**

15 *Restraining injunctions*

- 16 (1) If a person has engaged, is engaging or is proposing to engage, in
- 17 conduct that is or would be an offence against this Act, the Federal
- 18 Court of Australia may, on application by the Minister, grant an
- 19 injunction:
- 20 (a) restraining the person from engaging in the conduct; and
- 21 (b) if, in the Court's opinion, it is desirable to do so—requiring
- 22 the person to do a thing.

23 *Performance injunctions*

- 24 (2) If:
- 25 (a) a person has refused or failed, or is refusing or failing, or is
- 26 proposing to refuse or fail, to do a thing; and
- 27 (b) the refusal or failure is or would be an offence against this
- 28 Act;
- 29 the Federal Court of Australia may, on application by the Minister,
- 30 grant an injunction requiring the person to do that thing.

Section 70

1

Interim injunctions

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- (3) Before deciding an application for an injunction under subsection (1) or (2), the Federal Court of Australia may grant an interim injunction:

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(a) restraining a person from engaging in conduct; or

6

(b) requiring a person to do a thing.

7

Discharging or varying injunctions

8

- (4) The Federal Court of Australia may discharge or vary an injunction granted under this section.

9

10

Certain limits on granting injunctions not to apply

11

- (5) The power of the Federal Court of Australia under this section to grant an injunction restraining a person from engaging in conduct may be exercised:

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(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

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(b) whether or not the person has previously engaged in conduct of that kind.

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- (6) The power of the Federal Court of Australia under this section to grant an injunction requiring a person to do a thing may be exercised:

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(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and

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(b) whether or not the person has previously refused or failed to do that thing.

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Other powers of the Federal Court unaffected

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- (7) The powers conferred on the Federal Court of Australia under this section are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

29

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71 Forfeiture

- 1
- 2 (1) If a person supplies, or attempts to supply, goods in contravention
3 of this Act, the goods, and any thing in which they are contained,
4 are forfeited to the Commonwealth.
- 5 (2) If a person supplies, or attempts to supply, technology relating to
6 goods in contravention of this Act, the technology, and any thing
7 that contains the technology and is used or involved in the
8 contravention or attempted contravention, are forfeited to the
9 Commonwealth.

Seizure

- 10
- 11 (3) Each of the following persons may, without warrant, seize any
12 goods, technology or thing that is forfeited, or that the person has
13 reasonable grounds to believe is forfeited, to the Commonwealth
14 under subsection (1) or (2) and take the goods, technology or thing
15 before a court of summary jurisdiction:
16 (a) a member of the Australian Defence Force;
17 (b) a member or special member of the Australian Federal Police
18 or a member of the police force of a State or Territory;
19 (c) an officer of Customs (within the meaning of the *Customs*
20 *Act 1901*).

Role of court of summary jurisdiction

- 21
- 22 (4) If goods, technology or a thing is taken before a court of summary
23 jurisdiction under subsection (3):
24 (a) the court must inquire into the matter; and
25 (b) the court must:
26 (i) if the court is satisfied that the goods, technology or
27 thing is forfeited—order that the goods, technology or
28 thing be condemned; or
29 (ii) if the court is not so satisfied—order that the goods,
30 technology or thing be delivered to whoever the court is
31 satisfied is entitled to the goods, technology or thing.

Section 72

1 (5) Before inquiring into a matter in accordance with subsection (4), a
2 court of summary jurisdiction may require notice of the inquiry to
3 be given to anyone that the court thinks appropriate.

4 *Pending prosecutions*

5 (6) If a prosecution is pending for an offence against this Act
6 connected with the goods, technology or thing, an order for the
7 condemnation, or for the delivery to a person, of the goods,
8 technology or thing must not be made until the prosecution is
9 determined.

10 *Storage of things*

11 (7) Goods, technology or a thing seized under subsection (3) must be
12 stored in accordance with the procedures prescribed by the
13 regulations. This must be done until an order is made under
14 subsection (4).

15 *Destruction etc. of things*

16 (8) Goods, technology or a thing condemned must be destroyed or
17 otherwise dealt with in accordance with the procedures prescribed
18 by the regulations. This must be done as soon as practicable after it
19 is determined that the goods, technology or thing is condemned.

20 (9) Until the condemned goods, technology or thing is so destroyed or
21 otherwise dealt with, the condemned goods, technology or thing
22 must be stored in accordance with the procedures prescribed by the
23 regulations.

24 **72 Evidential certificates by Minister**

25 (1) The Minister may certify in writing that a notice under subsection
26 14(1) was in force in relation to a specified person on a specified
27 day.

28 (2) In any proceeding, a certificate under subsection (1) is prima facie
29 evidence of the matters stated in the certificate.

73 Delegation by Minister

- 1
- 2 (1) The Minister may, by writing, delegate all or any of the Minister's
3 functions or powers under this Act or the regulations to:
4 (a) the Secretary; or
5 (b) an SES employee, or acting SES employee, in the
6 Department; or
7 (c) an APS employee who holds, or is acting in, an Executive
8 Level 2, or equivalent, position in the Department.

9 Note: The expressions *APS employee*, *SES employee* and *acting SES*
10 *employee* are defined in section 2B of the *Acts Interpretation Act*
11 *1901*.

- 12 (2) However, subsection (1) does not apply to the Minister's functions
13 or powers under subsection 11(8), section 14, subsection 16(8),
14 Part 3 or section 64, 68 or 72.

15 *Delegation of functions or powers under Part 3*

- 16 (3) The Minister may, by writing, delegate all or any of the Minister's
17 functions or powers under section 27 or 28 or subsection 31(8) or
18 32(4) to:
19 (a) the Secretary; or
20 (b) an SES employee, or acting SES employee, in the
21 Department; or
22 (c) an APS employee who holds, or is acting in, an Executive
23 Level 2, or equivalent, position in the Department.
- 24 (4) The Minister may, by writing, delegate all or any of the Minister's
25 functions or powers under section 29, 35 or 36 to:
26 (a) the Secretary; or
27 (b) an SES employee, or acting SES employee, in the
28 Department.
- 29 (5) However, subsection (4) does not apply to the Minister's power
30 under paragraph 29(1)(c).

Section 74

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Limitations

- (6) In performing functions or exercising powers under a delegation under this section, the delegate must comply with any directions of the Minister.
- (7) A delegate must not make a decision of a kind mentioned in column 1 of an item in the following table if the delegate is satisfied that the thing mentioned in column 2 of that item would prejudice the security, defence or international relations of Australia:

Decisions of delegates		
Item	Column 1 Decision	Column 2 Thing
1	A decision under section 11 to refuse to give a person a permit for an activity covered by the person's application for a permit	The activity
2	A decision under section 16 to refuse to give a person a permit for an arrangement covered by the person's application for a permit	The activity covered by the arrangement
3	A decision under section 27 to refuse to approve a person as a member of the Australian Community	The person's holding of such an approval

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- (8) If subsection (7) applies:
- (a) the delegate must refer the particular case to the Minister; and
- (b) the Minister must decide the case personally.

74 Delegation by Secretary

- (1) The Secretary may, by writing, delegate all or any of the Secretary's functions or powers under this Act or the regulations to:
- (a) an SES employee, or acting SES employee, in the Department; or

Section 75

1 (b) an APS employee who holds, or is acting in, an Executive
2 Level 2, or equivalent, position in the Department.

3 Note: The expressions *APS employee*, *SES employee* and *acting SES*
4 *employee* are defined in section 2B of the *Acts Interpretation Act*
5 *1901*.

6 (2) However, subsection (1) does not apply to the Secretary's powers
7 under section 39.

8 (3) In performing functions or exercising powers under a delegation
9 under this section, the delegate must comply with any directions of
10 the Secretary.

11 **75 Regulations**

12 The Governor-General may make regulations prescribing matters:

- 13 (a) required or permitted by this Act to be prescribed; or
14 (b) necessary or convenient to be prescribed for carrying out or
15 giving effect to this Act.