



A GENERAL INFORMATION GUIDE FOR  
**AUSTRALIAN INDUSTRY**

ON AUSTRALIAN  
EXPORT CONTROLS

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APRIL 2002

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"ENSURING AUSTRALIA EXPORTS RESPONSIBLY"

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The Australian Government encourages the development of industry within Australia, and believes that industry's access to international markets and the policy of Defence self-reliance are important.

The Government also encourages the export of defence and related goods and dual-use technology, while recognising that there is a need to have control over these exports to protect and promote Australia's strategic and foreign policy interests.

The Australian Government controls the export of these goods under the Customs Act 1901 through Regulation 13E of the Customs (Prohibited Exports) Regulations.

## ***WHY IS THE EXPORT OF STRATEGIC GOODS CONTROLLED?***

Export controls are in place to prevent the unauthorised export of controlled goods and technologies. Some technologies are more sensitive from a strategic perspective than others, as are some export destinations. Australian export controls differentiate between levels of technology and export destinations in accordance with their respective strategic sensitivity.

Australia is an active member of various international technology control groups and regimes. The members of these groups and regimes work together in formulating lists of goods and technologies that are sensitive and need protecting. These groups and regimes cover technologies such as military, dual-use, missile, nuclear, biological and chemical.

In assessing applications for the export of defence and strategic goods the following criteria are considered. Proposed exports may be denied if they are:

- to countries against which the United Nations Security Council or United Nations General Assembly has imposed a mandatory arms embargo;
- to countries with policies or interests which are inimical to the strategic interests of Australia or its friends and allies, such as countries developing weapons of mass destruction or supporting terrorism;
- to governments that seriously violate their citizens' rights unless there is no reasonable risk that the goods might be used against those citizens;
- where foreign and strategic policy interests outweigh export benefits. If the goods would be used contrary to an international agreement, be used in conflict, either internal or external and if bilateral relations with regional countries could be damaged; or
- if the export would be reasonably judged to adversely affect Australian military capability.

## ***WHAT IS CONTROLLED?***

Export controls cover a wide range of defence and related goods and technologies; nuclear related goods, as well as goods and technologies with both civil and military applications, dual-use goods.

It should be noted that the controls also cover goods being exported after or for repair, and the temporary export of items for demonstration or loan purposes. The list of goods controlled

forms the Defence and Strategic Goods List (DSGL). The DSGL covers equipment, assemblies and components, associated test, inspection and production equipment, materials, software and technologies and is divided into 3 Parts.

**PART 1 covers defence and related goods** - those goods and technologies designed or adapted for use by armed forces or goods that are inherently lethal. These goods include:

**Military Goods** - those being designed or adapted for military purposes including parts and accessories, based on the Munitions List of the Wassenaar Arrangement.

**Non Military Lethal Goods (NMLG)** - equipment that is inherently lethal, incapacitating or destructive such as non-military firearms, non-military ammunition and commercial explosives.

**PART 2 Category 0** - Nuclear Materials, Facilities and Equipment covers material, equipment and technologies that are specific to the nuclear industry but which could make a contribution to a nuclear explosive activity or an unsafeguarded nuclear fuel-cycle activity.

**PART 3 - Dual-use technology** which comprises goods and technologies developed to meet commercial needs but which may be used either as military components or for the development or production of military systems or weapons of mass destruction. Dual-use technology is divided into 9 categories incorporating goods and technologies from lists of goods originating from the Wassenaar Arrangement (WA), Missile Technology Control Regime (MTCR), Nuclear Suppliers Group (NSG), Australia Group (AG) and the Chemical Weapons Convention (CWC);

Category 1	Materials, Chemicals, Microorganisms and Toxins;
Category 2	Materials Processing;
Category 3	Electronics;
Category 4	Computers;
Category 5	(pt 1) Telecommunications;
Category 5	(pt 2) Information Security;
Category 6	Sensors and Lasers;
Category 7	Navigation and Avionics;
Category 8	Marine;
Category 9	Propulsion.

Each of the 9 dual-use categories and category 0 is subdivided into five sub-categories:

A. Equipment, Assemblies and Components;
B. Test, Inspection and Production Equipment;
C. Materials;
D. Software;
E. Technology.

The complete lists of controlled goods can be found in the publication *'Australian Controls on the Export of Defence and Strategic Goods, A Guide for Exporters and Importers'* .

The Guide explains your obligations when exporting controlled goods and the administrative procedures for gaining export permits and licences. The complete Guide and application forms can be found at our web site [www.defence.gov.au/dmo](http://www.defence.gov.au/dmo) (select export controls).

## **HOW ARE EXPORT CONTROLS ADMINISTERED?**

Controls on the export of defence and strategic goods are administered by the Defence Trade Control and Compliance (DTCC) Section of the Department of Defence whilst barrier control rests with the Australian Customs Service.

Applications to export defence and strategic goods are considered on a case-by-case basis by the Department of Defence taking into account strategic, foreign policy and economic factors as well as human rights concerns. Goods are assessed by the DTCC Section against a combination of specifications set out in the Guide. Applications for export approvals to sensitive destinations or exports of sensitive goods involve consultation with other Government departments and agencies. This consultation is done through the Standing Interdepartmental Committee on Defence Exports (SIDCDE) which comprises representatives from the Department of Defence, Foreign Affairs and Trade, Attorney-Generals, Prime Minister and Cabinet, AUSTRADE and the Australian Customs Service.

Applications to export nuclear-related and dual-use goods are also considered on a case-by-case basis and may require inter-agency consultation before approval is given.

## **TYPES OF PERMITS AND LICENCES AVAILABLE**

Export permits and licences may be issued to individuals and companies to cover one-off exports, ongoing transactions, and temporary exports covering repairs, demonstrations or loans.

Goods listed in Part 1 of the DSGL Military and Non-Military Lethal Goods may be exported using one of the following permits or licences:

**Military in Principle (MIP)** is a preliminary approval that indicates the likely outcome of a future application to export particular Part 1 goods to a specific destination. In applying for an MIP, exporters are asked to provide as much relevant information as possible to support their application, including the anticipated size of an order and its monetary value.

Note that an MIP does not allow the exporter to export goods. The exporter must apply for and receive an export permit or licence to actually export the goods. The granting of an MIP does, however, indicate a predisposition for the approval of a future application to export. It also demonstrates the likelihood of an export permit being granted. The original decision will be reviewed when an application to export is received to ensure there has been no changes in the Government's export policy, the nature of the product or the circumstances of the destination. MIPs are valid for a period of 36 months.

**Military Export Approval (MEA)** is a permit to export a specific quantity of Part 1 Goods to a single consignee. An MEA is valid for 12 months from the date of processing and exporters should indicate if more than one shipment will be required to complete their order or transaction, in which case multiple shipments can be indicated on the permit.

**Military Temporary Export (MTT)** permit covers Part 1 goods that are being exported temporarily overseas for demonstration purposes such as exhibitions trials, testing, competitions or goods on loan. The permit is valid for 12 months from the date of processing. The MTT is granted subject to the condition that the exporter advises the Department of Defence upon the return of the goods to Australia.

**Military Return to Manufacture (MRM)** permit covers Part 1 goods that are being returned to manufacturers for repairs, warranty work or exchange. An MRM may be issued without defined quantities to companies who have an ongoing requirement to export goods in support of a maintenance program. The MRM is valid for 12 months from the date of processing and may be used for part shipments during that time.

**Military Return to Owner (MRO)** permit covers Part 1 goods being returned to the owner after repairs or warranty work have been carried out in Australia. The MRO is valid for 12 months from the date of processing and may also be used for part shipments.

**Military Export Licence (MEL)** may be issued to cover unspecified quantities of Part 1 goods to one or more consignees and destinations. The MEL may be issued to exporters where the nature and frequency of their exports to certain consignees would justify the issue of a licence. Applications for licences will be considered in accordance with procedures for permits and take into account criteria applicable to the type of goods and destinations. An MEL will enable companies to respond quickly to requests for exports of goods to consignees listed on the licence and is valid for 24 months from the date of processing.

Goods listed in Parts 2 and 3 of the DSGL – Nuclear Material, Facilities and Equipment; Dual-Use Goods and Technologies may be exported using one of the following permits or licences:

**Individual Export Permit (IEP)** may be issued to cover a single export of a specific quantity of Part 2 and Part 3 goods to an identified consignee and is valid for 6 months from the date of processing.

**Temporary Individual Export Permit (IEP)** may be issued where goods are being exported temporarily for a specific reason, i.e., test equipment used for installation purposes and then returned to Australia or for equipment used for geological surveys. When this type of permit is issued, conditions stating the use of the equipment will be noted on the permit, and return of the goods to Australia must be notified to the Department of Defence. The temporary permit is also valid for 6 months from the date of processing.

**General Export Licence (GEL)** is used to cover the export of a range of goods to unspecified consignees or end-users to listed countries and is normally valid for one (1) year from the month of issue. Exporters should specify countries that they reasonably expect to export to during the validity of the licence. The licence is available to cover Part 3 goods.

**Export Distribution Licence (EDL)** is available where an Australian Exporter wishes to export multiple shipments of goods that would normally require an Individual Export Permit. An EDL covers the export of an approved range of Part 2 and 3 goods to nominated qualified consignees and is valid for two (2) years.

**Maintenance Repair and Return Licence (MRR)** is available where an Australian firm is required, on a regular basis, to return goods for repair to an overseas supplier, or receives goods from overseas for repair in Australia, and subsequently needs to send goods out after the items have been repaired. This licence covers the export of an approved range of Part 3 goods to specified companies on the licence and is valid for two (2) years

**Export Service Supply Licence (ESS)** is available where an Australian firm is required to send Part 3 goods, which would normally require an Individual Export Permit, out of Australia at short notice in support of a maintenance program where time is critical. A typical example is in support of an aircraft fleet or a mining or publishing operation. An ESS is valid for two (2) years and covers the export of nominated goods to specified companies on the licence.

## ***SUPPORTING DOCUMENTATION***

In applying for approval to export controlled goods and technologies, exporters may require supporting documentation. These may take the form of end-use and non-transfer assurances, international import certificates or in some cases purchase orders or other evidence of transfer of ownership. The requirements vary depending on the types of goods involved, the destination and the proposed end-user of the goods.

## ***EXPORT OF CRYPTOGRAPHIC GOODS FOR PRIVATE USE***

The export controls recognise the legitimate use of information security products to protect company information when employees are overseas on business. The temporary export of these products is permitted when they accompany their user for the user's personal use. No formal approach to the Department of Defence or statement to the Australian Customs Service is required.

The temporary export of cryptographic hardware or software products by Australian citizens or lawful permanent residents is permitted on the conditions that the items:

- a. are not sold, loaned or otherwise transferred;
- b. remain under the control of and in the possession of the exporter;
- c. are not to be reproduced or copied;
- d. must return to Australia with the exporter; and
- e. shall not be used for demonstration, marketing or sales purposes.

If the cryptographic products are lost or stolen while outside of Australia, the exporter shall advise the DTCC Section of the Department of Defence, in writing, of the incident within 14 calendar days of returning to Australia.

# ***WEAPONS OF MASS DESTRUCTION (PREVENTION OF PROLIFERATION) ACT***

Goods or services that will assist in a weapons of mass destruction program are controlled under the Weapons of Mass Destruction (WMD) Act. This Act covers goods not already covered by existing export controls. Penalties are severe for suppliers that know, suspect or are informed by the Government that the supply of particular goods and/or services will breach the WMD Act. Penalties include up to 8 years imprisonment, fines of \$50,000 for individuals and \$250,000 for companies and /or confiscation of goods. For further information see the WMD Brochure.

## ***HOW DO I KNOW IF I NEED A PERMIT OR LICENCE?***

Prior to exporting any defence and related goods, and dual-use goods from Australia you should check if they are listed in the DSGL. The officers of the DTCC Section can advise you if your goods require a permit, and can provide assistance in completing the associated forms.

## ***WHAT HAPPENS IF I EXPORT WITHOUT A PERMIT?***

As stated previously, Australia's export controls are implemented through the Customs Act 1901 and the Customs (Prohibited Exports) Regulations, and there are penalties if you choose to ignore these controls.

The Customs Act 1901 provides penalties for persons and/or companies who unlawfully attempt to export controlled goods without a permit or licence.

- a. Where the Court can determine the value of the goods to which the offence relates, a penalty not exceeding:
  - i. 3 times the value of the goods; or
  - ii. \$100,000which ever is the greater; or
- b. Where the Court cannot determine the value of those goods - a penalty not exceeding \$100,000.

In addition the goods as well as a conveyance used for the unlawful export of the goods may be seized and forfeited to the Commonwealth.

Goods classified under the DSGL are classified as 'Tier 2' goods under s.233BAB of the Customs Act 1901. As such, a person guilty of knowingly or recklessly exporting such goods where that export was prohibited absolutely, or prohibited without approval and approval was not obtained, is subject to a fine not exceeding \$250,000 and/or imprisonment for 10 years.

There are also penalties for giving false information when applying for a permit or licence. A person making a false representation in any manner whatsoever may be prosecuted for an offence against the Crimes Act and, if convicted, face a penalty of \$12,000 and/or imprisonment for two years. A corporation faces a penalty of \$60,000.



# Contact us *Contacts*

For enquiries and status of applications:

Telephone: **[+61 2] 6266 2586**

Facsimile: [+61 2] 6266 2997

For technical advice and advisory service:

Telephone: **[+61 2] 6266 3157**

Our website: [www.defence.gov.au/dmo](http://www.defence.gov.au/dmo)

If you would like any further information regarding export controls or the procedures for obtaining a permit or licence please contact

Director  
Defence Trade Control and Compliance Section  
International Materiel Branch  
Industry Division  
Department of Defence  
Campbell Park Offices 3-7-05  
CANBERRA ACT 2600