UNDER REVIEW

Defence Export Controls Procedure

Related Policy	*Defence Export Controls Policy*
Responsible Officer	Deputy Vice-Chancellor (Research)
Approved by	Deputy Vice-Chancellor (Research)
Approved and commenced	November, 2016
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Responsible Organisational Unit	Office of Research Services

CONTENTS

1   Objective

This document establishes the procedure to implement the *Defence Export Controls Policy*.

2   Scope

All staff, students, visiting fellows and scholars, and persons holding discretionary titles of the University of Tasmania, who work with defence and strategic goods, technology and software.

3   Procedure

Export control laws regulate the export from Australia to a place outside Australia of defence and strategic goods, technology and software listed on the Defence and Strategic Goods List (DSGL) (DSGL items). This includes the supply and publication of certain controlled information. While research or teaching activities may not be specifically related to weapons or defence, they may involve DSGL items. Export of these items from Australia to a place outside Australia requires a permit.

DSGL items are not prohibited from being exported; rather they need a permit before they can be exported.

3.1   When does an export occur?

An export occurs when DSGL items are moved from Australia to a place outside Australia. Exports can be '*tangible'* and '*intangible'*.

A '*tangible'* export is a physical export of defence and strategic goods, technology and software - for example items exported by ship, aircraft, post or courier or carried in checked-in or hand-held luggage. A '*tangible'* export can be in the form of technology stored on a physical medium such as a CD, DVD, USB or computer hard drive or in the form of blueprints, diagrams or notes.

An '*intangible'* export can be in the form of email, fax, telephone, video conferencing, presentation at an international conference or providing access to electronic files.

'*Tangible'* and '*intangible'* exports of DSGL items require an export permit or approval (see section 3.3 Permits). Failure to obtain a permit may incur significant penalties.

3.2   When do export controls apply?

When assessing whether export controls apply, the following questions should be asked.

Does the research or teaching activity involve an item subject to export controls under the DSGL?

The DSGL is divided into two parts.
Part 1 is the Munitions List which lists certain goods and technologies designed or adapted for military use or goods that are inherently lethal. It has two categories: Military Goods and Non Military Lethal Goods.

Part 2 is the Dual-Use List which lists equipment 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. It has 10 categories.

Category 0: Nuclear Materials, Facilities and Equipment
Category 1: Materials, Chemicals, Microorganisms and Toxins
Category 2: Materials Processing
Category 3: Electronics
Category 4: Computers
Category 5: Telecommunications and Information Security
Category 6: Sensors and Lasers
Category 7: Navigation and Avionics
Category 8: Marine
Category 9: Aerospace and Propulsion

If the research or teaching activity does involve an item subject to export controls under the DSGL, does the activity fall within one of the DSGL exemptions?

If the research or teaching activity does not fall within one of the DSGL exemptions, will the activity involve export by export, supply or publication from Australia to a place outside Australia or involve brokering?

If the answer is yes, then export controls probably apply.

DEC has developed on [on-line search tool](#) to assist in searching the DSGL. DEC has also developed a [self-assessment tool](#) to assist individuals in determining whether their export, supply, publication or brokering activity is controlled and requires an export permit or approval. A copy of the search results can be saved and printed.

3.2.1   Permits

3.2.2   Permit application process

All University export control permit and approval applications are made in the name of the University. All applications must be made through the Office of Research Services. If an export permit or approval is required, individuals should contact the Defence Export Controls Responsible Officer [export.controls@utas.edu.au] who will apply for the export permit or approval.

There are different types of export permits and approvals available including single use permits, permits issued for a period of up to five years, permits issued for the life of a project and multiple-use permits for the export or supply of certain Part 2 DSGL defence and strategic goods, technology and software to certain approved destinations (Australian General Exports Licences; AUSGELs).

An application can be made by one person, a project leader, on behalf of a project for a permit and nominate co-applicants. If DEC assesses that the applicant and co-applicants may have a permit, it will notify all people included on the application and issue them with identical (except for the name) individual permits. A person, generally the project leader, must be nominated as the coordinator for the permit. Any changes to the individual permits can be managed by the holder of the permit, and additional collaborators can be added to all permits as required depending on DEC's assessment.

AUSGELs are broad permits for the Export of pre-approved DSGL items to approved destinations and purposes for five years duration or longer if required. Once approved, any of the pre-approved DSGL items can be exported to any of the approved destinations provided they match the approved purpose of export listed in the AUSGEL.

3.2.3   Required permits

3.2.4   Physical (tangible) export permits

A permit is required to export defence and strategic goods, technology and software in physical form.

3.2.4.1 Supply (intangible) permits

- Controlled technology is supplied from a place in Australia to a place outside Australia; or
- Access to controlled technology is provided (for example by providing passwords to electronic files) and at the time of providing the access the provider is in Australia and the other person is outside Australia.

Exception

A permit is not required for pre-publication supply of Part 2 DSGL technology or for verbal supply of DSGL technology IF the supply is not the provision of access to DSGL technology or for a military end-use or a Weapons of Mass Destruction (WMD) program.

3.2.4.2 Publication approvals

An approval will be required to place Part 1 DSGL technology in the public domain by publishing it on the internet or otherwise. This requirement applies to anyone located in Australia, to an Australian citizen or resident located outside Australia or if the publishing conduct occurs outside Australia and a result of that conduct occurs inside Australia

Exception

A publication approval is not required for publication of Part 2 DSGL technology.

3.2.4.3   Brokering permits

A brokering permit will be required for brokering the transfer of Part 1 DSGL items. A person must be registered as a broker before a brokering permit can be applied for.

Exceptions

A permit is not required for brokering the transfer of defence and strategic goods, technology and software from a listed country. A permit is not required for brokering Part 2 DSGL items unless the Part 2 DSGL items are being brokered for a military end-use or a WMD program.

3.3   The export control process

The University is committed to full compliance with all export control laws that apply to its research, academic and business activities.

3.3.1   Responsibility for export controls

Primary responsibility for compliance with export control laws rests with individual researchers. This responsibility stems both from the obligations imposed on individuals by export controls legislation and the premise that researchers have the expertise in understanding the types and potential applications of products, data and technology that result from their research endeavours.

The University believes the best method of ensuring understanding and compliance with export control laws is one based on the University working closely with individuals associated with the University who work with DSGL items to understand their issues and develop solution based processes which further research whilst ensuring compliance with export control laws.

To assist in this process, the University has established Defence Export Controls Responsible Officer and a Defence Export Controls Advisory Group which will provide additional oversight of export controls issues. It is the University's expectation that day to day oversight of export controls compliance will sit with University Faculties and Institutes.

3.3.2   Defence Export Control Responsible Officer

The University Research Integrity Coordinator (RIC) has been nominated as the Defence Export Controls Responsible Officer and is the primary point of contact for internal and external export controls enquiries and permit applications. The RIC provides advice and assistance to the University, individuals associated with the University who work with DSGL items and to the Defence Export Controls Advisory Group.

3.3.3   Export Controls Advisory Group

The Export Controls Advisory Group, a subcommittee of the University Research Committee (URC), will assist in instances where further deliberation is required to determine whether an application for an export controls permit should be made to DEC. Each committee member has expertise in at least one of the categories of defence and strategic goods, technology and software listed in Parts 1 and 2 of the DSGL.

3.3.4   Faculties

The Associate Dean Research (or equivalent or delegate) is the Faculty's point of contact for export controls issues. Day to day responsibility for export controls will sit with the Faculty's research committee (or equivalent) with one member of the committee bearing responsibility for ensuring new appointees to the Faculty who work with defence and strategic goods, technology and software undergo export controls training.

3.3.5   Institutes

The Associate Director of Research (or equivalent or delegate) is the Institute's point of contact for export controls issues. Day to day responsibility for export controls will sit with the Institute's research committee (or equivalent) with one member of the committee bearing responsibility for ensuring new appointees to the Institute work with DSGL items undergo export controls training.

3.4   Compliance tools

To assist individuals associated with the University who work with DSGL items, in addition to the Defence Export Controls Policy and this Procedure, the University has developed Defence Export Control webpage which provides an introduction to export controls, details the decision making process to be undertaken when determining whether a research or teaching activity is subject to export controls and describes the types of permits and the University permit application process.

The webpage includes links to definitions and guidance materials and tools developed by DEC including the online Activity Questionnaire and DSGL search tool.

3.5   Export controls training

Individuals associated with the University who work with DSGL items will be required to undertake the online DEC training.

In addition, the University will ensure individuals associated with the University who work with DSGL items are notified of changes in export control requirements and provided with accurate, reliable interpretation of those requirements.

3.6   Record keeping

Records of all relevant documents relating to the physical export of DSGL items must be kept for five years from the date of export. A permit may contain conditions of use including reporting conditions which must also be complied with.

Records of intangible supplies of DSGL items must be kept for a period of five years and must contain the following information:
- a description of the DSGL items supplied under the permit;
- the unique identifier given to the permit under which the permit holder supplied DSGL items;
- the name of any person to whom the permit holder supplied DSGL items under the permit; and either:
    - if the permit covers one or more supplies of DSGL items – the date of the supply; or
    - if the permit covers the supply of DSGL items for a period of time or for a project - the period, or periods, of time during which the permit holder supplied the DSGL items.

The University will keep central records of all permits sought from DEC, including details of the research team, the DSGL item, permit number and expiry date.

3.7   Audit process

The University's controlled export activities will be audited annually by the Defence Export Controls Advisory Group. The purpose of the audit process is to verify that export control procedures and record keeping requirements are correctly implemented by individuals associated with the University who work with DSGL items.

Breaches of export controls laws identified in the process of audit will be investigated and any system issues reviewed. Immediate corrective action will be taken including timely notification to DEC where necessary. Annual audit results will be reported to the University Research Committee.

3.8   Offences

The export of defence and strategic goods, technology and software or the supply or publication of DSGL items from Australia to a place outside Australia or the brokering of defence and strategic goods, technology and software without a permit or approval constitutes an offence and is subject to a fine not exceeding 2,500 penalty units or imprisonment for 10 years, or both.

It is also an offence to supply DSGL technology outside the terms of a permit or approval and is subject to a fine of 60 penalty units.

Contravention of a recordkeeping requirement under the *Defence Trade Controls Act 2012* incurs a penalty of 30 penalty units.

4   Definitions and Acronyms

Term/Acronym	Definition
Basic scientific research	Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.
Broker	Arranging for another person to supply goods or DSGL technology, where the goods are listed in the Defence and Strategic Goods List and the supply is, or is to be, from a place outside Australia to another place outside Australia.
Export Control Laws	Include *Customs Act 1901* (Cth)*, Customs (Prohibited Exports) Regulations 1958* (Cth)*, Customs (Prohibited Imports) Regulations 1956* (Cth)*, Defence and Strategic Goods List - November 1996* (Cth), Defence and Strategic Goods List Amendment Instrument 2015 (Cth), *Defence Trade Controls Act 2012* (Cth)*, Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth) and any subsequent versions.
DEC	Defence Export Control Office.
DSGL	Defence and Strategic Goods List. Australia's list of regulated goods and technology which require a permit or license before exportation.

DSGL technology	A thing that is: (a) technology, or software, as defined in the Defence and Strategic Goods List; and (b) within the scope of that list.
Intangible	Not having a physical presence.
In the public domain	"Technology" or "software" which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove "technology" or "software" from being "in the public domain").
Organisational Unit	College, Faculty, School, Centre, University Institute, other University Entity, Division, Section or University Business Enterprise.
Publish	Making DSGL technology available to the public by placing it in the public domain, for example via a journal or website, without access restrictions.
Researcher	Anyone associated with the University of Tasmania involved in the conduct of research. This includes staff, visiting fellows and scholars, people holding discretionary titles and students.
Supply	Supply by way of sale, exchange, gift, lease, hire or hire-purchase and in relation to DSGL technology—includes providing access to DSGL technology.
Tangible	Clear and definite.

5   Supporting Documentation

- *Responsible Conduct of Research Policy*
- *Legal Compliance Policy*
- *Travel Policy*
- *Admissions Policy*
- *Collaborative Research Policy*
- *Dangerous Goods Handling Policy*
- *National Code of Practice for Chemicals*
- *Purchasing Policy*
- *Ordinance 18, Intellectual Property*
- *Records Management Policy*
- Workplace Inspection Procedure and Checklist

6   Versioning

Current Version	Version 1 – *Defence Export Controls Procedure*; approved November, 2016.