

# Defence Trade Control Act 2012 - Compliance and Administration Policy

## Section 1 - Purpose

(1) This Policy sets out Charles Sturt University's obligations and expectations for compliance with the [Defence Trade Controls Act 2012](#).

### Scope

(2) This Policy applies to all academic staff, adjunct staff, research fellows and Higher Degree by Research students.

## Section 2 - Glossary

(3) Defence Trade Controls Act - means the Commonwealth of Australia's [Defence Trade Controls Act 2012](#) which regulates dealings in items listed in Part 1 or 2 of the Defence and Strategic Goods List and in items covered by the Defence Trade Cooperation Treaty between Australia and the United States of America.

(4) Defence Trade Controls Amendment Bill 2015 - provides an additional 12 month implementation period before offence provisions and record-keeping requirements commence.

(5) [Defence Strategic Goods List](#) - means the document published by the Minister for Defence, and published, in accordance with the [Customs Act 1901](#) and specifies the goods, software or technology that is regulated by the [Defence Trade Controls Act 2012](#).

(6) [Defence Export Controls](#) - means the Government office responsible to the Minister for Defence for regulating the export of defence and dual-use goods as part of Australia's system of export controls.

(7) Defence Trade Control Committee - means the Charles Sturt University committee established by the Deputy Vice-Chancellor (Research, Development and Industry) (DVC (RDI)) to support and oversee the compliance of the [Defence Trade Controls Act 2012](#) by Charles Sturt University.

(8) [Online Defence Strategic Goods List Tool](#) - means the online tool developed by Defence Export Controls for self-assessment to determine whether a permit is required from Defence Export Controls for the export, supply, publish or broker controlled goods, software or technology.

(9) Permit - means a permit issued by Defence Export Controls.

(10) Published - means information accessible in the public domain.

(11) Researcher - means a Charles Sturt University staff, student or adjunct staff member conducting research in the name of, or whilst utilising University resources.

(12) Trade - means the publication of documents and the dissemination of information through intangible means, such as an email to an overseas recipient, conference presentations, where the information within is related to certain goods and technologies listed in the [Defence Strategic Goods List](#).

## Section 3 - Policy

(13) As a higher education research institute, Charles Sturt University (the University) is committed to competitive research and research training. As part of this commitment, the University encourages the dissemination of knowledge.

(14) The Defence Trade Controls Act was enacted by the Commonwealth to regulate dealings in certain goods and technologies including those that may, from time to time, be dealt with by the University.

(15) The University has a statutory obligation to ensure compliance with the Defence Trade Controls Act. Breach of the legislation may result in substantial criminal penalties for:

- a. supplying Defence and strategic goods list technology;
- b. arranging for other persons to supply goods in the Defence and Strategic Goods List or to supply Defence Strategic Goods List technology; and/or
- c. publishing Defence Strategic Goods List technology.

(16) Prior to engaging in any publication or supply of goods, software or technology controlled by the University that are listed on the Defence Strategic Goods List, a permit must be obtained from Defence Export Controls.

(17) Administration of this Policy is the responsibility of the Deputy Vice-Chancellor (Research, Development and Industry) and ensuring that all researchers are informed of their obligations under the Defence Trade Controls Act prior to research being undertaken.

(18) Individual researchers with oversight from Heads of Schools and/or Research Centre Directors are responsible for determining if their research involves 'controlled technology' listed in the Defence Strategic Goods List and if it requires a permit prior to research being disseminated.

## Section 4 - Procedures

### Part A - Responsibilities of the Deputy Vice-Chancellor (Research, Development and Industry)

(19) The Deputy Vice-Chancellor (Research, Development and Industry) shall:

- a. establish the Defence Trade Control Committee; and
- b. set terms of reference for the Defence Trade Control Committee.

### Part B - The Charles Sturt University Defence Trade Control Committee

(20) The Defence Trade Control Committee shall be comprised of six experts, including members with skills and experience in the following fields:

- a. Biological Sciences;
- b. Chemical Sciences;
- c. Computing, Information and Communication Technologies;
- d. Other Physical Sciences/Engineering; and
- e. Research Management.

(21) The Chair shall be drawn from one of the academic areas identified in clause 20.

(22) The Committee shall also include at least one member who has no ongoing, substantive association (including personal, pecuniary or research interests) with matters likely to be considered by the Defence Trade Control Committee.

(23) The Committee shall meet at least once each trimester.

## **Part C - Responsibilities of the Defence Trade Control Committee**

(24) The Defence Trade Control Committee shall:

- a. ensure that this Policy and other University activities are compliant with the Defence Trade Controls Act as amended from time to time;
- b. establish and administer a process, including training programs, to ensure that all researchers are aware of their obligations under this Policy and the Defence Trade Controls Act prior to research being commenced;
- c. mandate and publish the minimum training requirements for researchers;
- d. provide University resources to enable researcher training;
- e. provide regular export control compliance training to researchers and relevant University Staff and record training completion;
- f. be responsible for addressing any perceived breaches of the Act including, if required by law, notifying Defence Export Controls of any material breaches and acting upon any notices received from Defence Export Controls to the Deputy Vice-Chancellor (Research, Development and Industry);
- g. establish a record keeping system of all permits, activities and publications that fall within the auspices of the Defence Trade Controls Act and complies with legislative and University requirements;
- h. conduct an annual audit of the research undertaken with the University to ensure that the activities of researchers comply with this Policy and confirm that the export control compliance and procedures are implemented appropriately and are compliant with relevant Australian laws and regulations, including record-keeping requirements;
- i. provide reports to the Finance, Audit and Risk Committee of the University Council through the Deputy Vice-Chancellor (Research, Development and Industry) and a comprehensive annual report of all activities to the Deputy Vice-Chancellor (Research, Development and Industry);
- j. ensure researchers and relevant University staff are aware of their export control compliance responsibilities and the internal structures and responsibilities for export control compliance;
- k. remain informed and up-to-date with any changes to export control laws, regulations, direction or guidance from Defence Export Controls and communicate updates to researchers and relevant University staff;
- l. provide advice and act as a conduit between the University and Defence Export Controls on questions and issues in the export control compliance area;
- m. institute procedures for researchers and relevant University staff to identify and manage suspected non-compliance with export control laws; and
- n. educate researchers and relevant University Staff about how to identify and manage suspicious approaches.

## **Part D - Responsibilities of Individuals**

(25) Individuals are responsible for compliance with the Defence Trade Controls Act as follows:

- a. individual researchers with oversight from Heads of Schools and/or Research Centre Directors are responsible for identifying any research conducted under their purview which may fall under the Act. Where such research is identified, the Head of School/Research Centre Director should direct all researchers involved in the project to

- undertake the relevant training modules at the earliest possible time;
- b. undertaking training as specified by the Defence Trade Control Committee;
- c. determining if their research involves 'controlled technology' listed in the Defence Strategic Goods List;
- d. determining if a permit is required prior to research being disseminated;
- e. applying for a permit as required and providing the original permit to the Defence Trade Control Committee;  
and
- f. taking all reasonable steps to establish whether it is dealing with legitimate end users who will use the exported or supplied items for legitimate purposes.

## Section 5 - Guidelines

### Part E - Training

(26) It is a requirement of this Policy that all staff in the following categories undertake training:

- a. staff in the Faculty of Science having "research" in their position description from the School of Agriculture and Wine Sciences, School of Animal and Veterinary Sciences, School of Biomedical Sciences, and School of Nursing, Midwifery and Indigenous Health;
- b. all staff in the School of Engineering having "research" in their position description.
- c. all staff in the School of Computing and Mathematics having "research" in their position description;
- d. all, Heads of Schools, all Research Centre Directors and all Laboratory Managers;
- e. Chair, Human Research Ethics Committee;
- f. Chair, Animal Care and Ethics Committee;
- g. all staff who self-identify as conducting activities that may be determined as being "at risk" of falling under the scope of the Act; and
- h. all staff identified by Heads of Schools or Research Centre Directors as conducting activities that may be determined as being "at risk" of falling under the scope of the Act.

(27) The training should consist of University-led training specified by the Defence Trade Control Committee and on-line training provided by Defence Export Controls or other like government department.

(28) Defence Export Controls provides [on-line training for researchers](#).

(29) This Policy requires that individual researchers carry the responsibility for compliance with the Defence Trade Controls Act. Interpretation of the Defence Trade Controls Act may be guided by access to the [Defence Export Control Compliance web page](#).

### Part F - Determining if a supply, software or technology are governed by the Defence Trade Controls Act

(30) Researchers are to conduct a preliminary self-assessment of research projects and proposed publications. The first step in this action is to determine whether a supply or publication is on the Defence Strategic Goods List.

(31) Defence Export Controls has a comprehensive guide to help determine whether a supply or publication falls under the Defence Trade Supply Act.

(32) If a researcher is still uncertain, then an application is required to be made through Defence Export Controls for a determination to be made. Relevant forms can be found on their website.

(33) It is important to consider that the Minister for Defence can prohibit any specific publication if it believes the publication would prejudice Australia's national security or international obligations.

## **Types of goods and technologies which may require a permit**

### **Defence Strategic Goods List Part 1**

(34) Part 1 covers military goods and technologies and non-military lethal goods and technologies. Part 1 includes:

- a. military platforms and components;
- b. weapons and ammunition;
- c. chemical and biological warfare agents;
- d. explosives;
- e. electronic systems and equipment;
- f. software and technology;
- g. civilian firearms (pistols, rifles, shotguns), ammunition, accessories and production equipment;
- h. certain commercial explosives; and
- i. airguns.

### **Defence Strategic Goods List Part 2**

(35) Part 2 covers dual-use goods and technologies. Part 2 includes:

- a. nuclear materials, facilities and equipment;
- b. materials, chemicals, micro-organisms, toxins;
- c. materials processing;
- d. electronics;
- e. computers;
- f. telecommunications and information security;
- g. sensors and lasers;
- h. navigation and avionics;
- i. marine; and
- j. aerospace and propulsion.

## **Part G - Applying for a Permit**

(36) If a research project or publication is related to Defence Strategic Goods List controlled technology, and may require a permit, researchers are to contact the Defence Trade Control Committee to receive advice on how to apply for a permit.

(37) Permits are granted by Defence Export Controls and requires mandated application forms to be completed. Forms can be obtained through the Defence Trade Control Committee.

(38) Should a permit be required for your supply or publication, it may be issued with certain conditions that must be adhered to. It is important to keep records in accordance with the regulations to prove compliance with the Defence Trade Controls Act.

## **Part H - Intangible Supply and Publication**

(39) For the purpose of the Defence Strategic Goods List, a publication is considered to be placing controlled

technology or information in the public domain by publishing it on the internet or otherwise.

(40) Publication controls apply to anyone located in Australia, or an Australian citizen or resident located outside Australia.

(41) Examples of a publication include publishing Defence Strategic Goods List Part 1 controlled technology in any journal, on a public website or a password protected intranet site.

(42) Only the publication of Defence Strategic Goods List Part 1 controlled technology is regulated. If a publication does not contain any Defence Strategic Goods List Part 1 controlled technology, then a permit is not required.

(43) It will be important for individuals to determine whether or not the information within your publication is Defence Strategic Goods List controlled by seeking advice from Defence Export Controls or the University's Defence Trade Control Committee. For example, an article about the existence of drone technology and its applications in mining and agriculture will not require a permit, while an article explaining how to modify a drone to achieve a range greater than 3000 km may be regulated depending on the level of technological detail within the publication.

(44) Examples of controlled publications:

- a. publication on an intranet site about how modifications were made to a Defence Strategic Goods List Part 1 technology to increase performance;
- b. publication on a website about methods researchers used to successfully implement upgrades that enhance the performance of a Defence Strategic Goods List Part 1 technology; and/or
- c. publication in a journal about new technology in development that would meet or exceed the performance parameters of an existing technology controlled under the Defence Strategic Goods List Part 1 where the publication contained detailed technical information.

(45) Examples of publications unlikely to be controlled:

- a. patent for a new Defence Strategic Goods List Part 1 technology;
- b. an article in a journal about the applications of a technology in development where this technology is controlled under the Defence Strategic Goods List's Part 1 and no technical information is disclosed in the article; and/or
- c. information published on the internet about existing research projects being conducted by the University related to Defence Strategic Goods List Part 1 technology.

## **Difference between intangible supply and publication**

(46) The definition of publication that the Australian Government uses is not the layman's definition. In the course of research, people may be disseminating information in a way that is considered to be an intangible supply, instead of a publication. Supplies have more stringent controls and are more likely to require a permit: for this reason it is important to determine whether an individual is making a publication or a supply of controlled technology.

- a. If controlled technology is published by placing it in the public domain, even if it can only be accessed by a payment, it is a publication. This would include publishing the technology on an internet or intranet page or in a journal that requires a subscription for access.
- b. If access to controlled technology is restricted to particular users or groups, it has not been placed 'in the public domain' but it will still be considered a supply by the Australian Government. For example, where you place controlled technology in an electronic file folder which requires a password to access and then provide the password to a person outside of Australia, you are making a supply of controlled technology.

(47) For the purpose of the Defence Strategic Goods List, an intangible supply occurs when a person in Australia provides Defence Strategic Goods List controlled technology, or access to Defence Strategic Goods List controlled

technology, to a person outside of Australia in a non-physical form such as an email, fax, phone conversation or password to a database. The stringency of the regulations depend on whether the technology is listed in Part 1 or Part 2 of the Defence Strategic Goods List. A supply of Defence Strategic Goods List Part 1 and/or Part 2 technology includes:

- a. sending an email or fax containing Defence Strategic Goods List technology to a recipient outside of Australia;
- b. providing a password to access a database that includes Defence Strategic Goods List technology to users that are located outside of Australia; and/or
- c. providing access to electronic files, voice or video recordings, or presentation slides containing Defence Strategic Goods List controlled technology to a person outside of Australia.

(48) The definition of supply is further expanded for Defence Strategic Goods List Part 1 technology. A supply of Defence Strategic Goods List Part 1 technology also includes making a supply verbally, such as providing instructions over the telephone or video conference to a person outside of Australia for the construction, development, maintenance, repair or upgrade of an item listed in Part 1 of the Defence Strategic Goods List.

(49) Telephone conversations, video conferences and in-person conversations containing Part 2 technology will not require a permit from Defence Export Controls, however the dissemination of any recordings of such to a person outside of Australia will require a permit.

## Status and Details

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