



RESEARCH EXPORT CONTROLS PROCEDURE

Policy Hierarchy link	UNSW Research Code of Conduct		
Responsible Officer	Director, Research Ethics & Compliance Support		
Contact Officer	Research Export Controls Officer E: exportcontrols@unsw.edu.au T: +61 2 9385 4235		
Superseded Documents	Nil.		
File Number	2016/04915		
Associated Documents	Customs Act 1901 Customs (Prohibited Exports) Regulations 1958 Defence Trade Controls Act 2012 Defence and Strategic Goods List Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 Australia-US Defence Trade Cooperation Treaty Australian Code for the Responsible Conduct of Research 2007 UNSW Research Code of Conduct UNSW Procedure for Handling Allegations of Research Misconduct		
Version	Authorised by	Approval Date	Effective Date
1.0	Acting Vice-President and Deputy Vice-Chancellor (Research)	31 March 2016	2 April 2016

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1. Purpose and Scope

This document sets out the responsibilities and authorities governing research export controls in accordance to the requirements of the *Customs Act 1901*, the *Customs (Prohibited Exports) Regulations 1958*, the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*, and the *Defence Trade Controls Act 2012* (henceforth referred to as the Act) and the *Defence Strategic Goods List* (the DSGL) and other relevant codes and legislation. The content of the document applies to all staff and research trainees at UNSW and affiliated centres and institutes involved in or working with DSGL goods, technology and software.

2. Preamble

Australia plays a significant part in the global effort aimed at stopping goods and technology that can be used in chemical, biological and nuclear weapons, or military goods and technologies, from being transferred to individuals, states or groups of proliferation concerns. For this purpose, Australia has in place export control laws to regulate the export of DSGL goods, technology and software from Australia to a place outside Australia. UNSW Australia recognises that non-compliance with these laws can attract significant criminal penalties for individuals breaching the laws and has implemented a system to train, review and promote compliance for researchers who may be affected by these laws.

3. Definitions

The following definitions apply to this Procedure and associated Guidelines:

Australian General Export Licence (AUSGEL): licence issued by the Australian Government Department of Defence enabling the export of a range of controlled goods, software and technologies to certain countries for certain purposes. AUSGELs are valid for five years.

Australia-US Defence Trade Cooperation Treaty: framework for the export or transfer of certain defence goods (Treaty Articles) between approved companies and government agencies in Australia and the United States, known as the Approved Community.

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.

Brokering: occurs when a person or organisation acts as an agent or intermediary in arranging the supply of DSGL goods, software and technology between two places located outside of Australia. For the activity to be considered brokering, the person must receive money or a non-cash benefit or advance their political, religious or ideological cause for arranging the supply.

Defence and Strategic Goods List (DSGL): Australia's export control list of regulated defence and strategic goods, technology and software. Part 1 lists military items and Part 2 lists dual-use items that may be used for commercial and research purposes but may also be used in military systems or for weapons of mass destruction.

Export controls: collective term for all legislation used by governments to manage the trade of sensitive goods and technology. In the Australian context it includes the Customs

Act 1901, the Defence Trade Controls Act 2012, the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 and Military End-Use provisions (section 112BA) and Sanctions.

Intangible export: any controlled goods that leave Australia electronically rather than in a physical form with an intention to be landed outside Australia. This includes goods sent for personal use, sale, demonstration, repair or return to the manufacturer.

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.

Publication: occurs when DSGL technology is made available to the public or to a section of the public via the internet or otherwise without access restrictions. Publication controls apply to anyone in Australia, or an Australian citizen or resident or Australian organisation located anywhere in the world. Having to pay to view the information is not an access restriction.

Regulator: the Australian Government Department of Defence and its Defence Export Controls Office.

Supply: occurs when a person in Australia provides DSGL technology to another person outside of Australia. If access to the DSGL technology is controlled or restricted to particular users or groups, it has not been placed 'in the public domain', and is therefore a supply. Examples of supply include supply via email or fax, or by providing someone outside of Australia with passwords to access controlled technology stored electronically.

Tangible export: any controlled goods that leave Australia in physical form, with an intention to be landed outside Australia. This includes goods sent for personal use, sale, demonstration, repair or return to the manufacturer, and controlled technology stored on a physical medium, such as a USB drive, computer hard drive or CD, outside of Australia.

Technology: specific information necessary for the development, production or use of a product. This information takes the form of technical data or technical assistance.

4. Regulatory Environment

UNSW is registered as a client with the Department of Defence. The Vice-Chancellor, as Head of the Establishment, has delegated the Deputy Vice-Chancellor (Research) to oversee research export controls at UNSW and promote compliance and training and awareness of the potential penalties for breaking the laws.

Primary responsibility for compliance with export control laws rests with the individual researcher due to the obligations imposed on individuals by the laws and the premise that researchers in particular have the expertise in deciding whether their activities or intended transfers require a permit or approval. It is the responsibility of the Deans and Heads of School to promote an environment where compliance with export controls is encouraged.

Applications for assessment, permits and approvals are lodged by the UNSW Export Controls Officer or delegate with the Department of Defence. A central register is maintained within the Research Division to track approved permits and approvals and compliance with their conditions.

5. Goods Covered in the DSGL

The DSGL includes equipment, assemblies and components, associated test, inspection and production equipment, materials, software and technology. The DSGL is divided into two parts:

1. Defence and related goods – those goods designed or adapted for use by armed forces or goods that are inherently lethal.
2. Dual-use goods – those goods comprising equipment and technology 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.

Researchers should in the first instance use the Department of Defence DSGL Quick Reference Guide and Online DSGL Tool to identify whether their goods or technology intended for export are listed in the DSGL. If the goods or technology are listed researchers need to complete a Department of Defence Application for DSGL Assessment and submit to the UNSW Export Controls Officer.

Controls to technology transfer do not apply to information in the public domain, to basic scientific research or to the minimum necessary information for patent applications. Activities that occur wholly within Australia are not captured by the Act. Export controls also rarely apply to information, knowledge and technology taught in undergraduate courses since the material taught is generally in the public domain and characterised as basic scientific research.

6. Supply, Publication and Brokering

The following activities involving controlled goods and technology may require a Department of Defence permit or approval:

- **intangible supply:** intangible supply is when a person in Australia provides controlled technology in a non-physical form (i.e. electronically) to another person outside Australia. Some examples include supply via email, fax or providing a password access to electronic files.
- **brokering:** brokering occurs when a person, acting as an agent or intermediary, arranges the transfer of controlled items between two or more persons located outside Australia and receives a benefit. Benefits include money or non-cash payments for the brokering activity, or if the brokering activity advances their political, religious or ideological cause.
- **publication of controlled goods and technology:** publication in the Act includes publishing on the internet, to the public or to a section of the public. Once controlled military technology is published in the public domain, it is no longer possible to regulate who has access to it. Publishing controlled military technology can put sensitive and potentially dangerous information into the wrong hands, with limited prospect of regulating that information.

Researchers should in the first instance use the Department of Defence Online DSGL Tool to identify whether their activities are controlled. If the activities as well as the goods or technology are controlled researchers need to complete a Department of Defence Application for DSGL Assessment and submit to the UNSW Export Controls Officer.

7. Export Controls Officer

The UNSW Export Controls Officer is the primary point of contact for internal and external export control enquiries and holds the University's Client Registration Number with the Department of Defence. The officer, in liaison with the UNSW Legal Office, provides advice and assistance to the University and its researchers on the requirements of Australian export control laws and permit and approval obligations. The officer submits applications to the Department of Defence and administers the University's AUSGELs as well as institutional records of permits and approvals. The officer assists in auditing activities of export controls compliance and maintains the University's export controls web site and links to Department of Defence resources, including training.

8. Requirements of Other Countries

Many countries have their own, often stringent, controls in place for the import and export of controlled goods and technology. This means that in addition to checking for the need to obtain a permit to export from Australia researchers also need to check whether there are permit requirements in the countries they intend to enter and depart. Where possible, researchers should contact their international collaborators or qualified courier service providers to seek the relevant information or contact the UNSW Export Controls Officer.

9. Monitoring of Research and Adverse Events

Research activities involving the export of controlled goods and technology and activities are monitored by the University and its delegated bodies through mechanisms including annual and final reports for each approved project, internal and external audits of compliance with permit and approval conditions, and site visits and interviews with researchers and laboratory staff. Safeguards to identify potential controlled exports are also in place at various stages of the grants and contracts process.

The University may seek to suspend or withdraw approval by the Department of Defence for the export of controlled goods and technology and activities where it is reasonable to believe that continuation of the export activities may compromise compliance with legislation.

Permit and approval holders are required to monitor research according to the permit and approval conditions and report unexpected adverse events to the Export Controls Officer as soon as possible in accordance to the emergency instructions on the UNSW Research Export Controls [website](#).

Issues identified during monitoring or adverse event reporting which may possibly involve breaches of the UNSW Research Code of Conduct are immediately referred to the DVC(R) and dealt with according to the UNSW Procedure for Handling Allegations of Research Misconduct.

10. Complaints and Grievances

Complaints about the conduct of research by UNSW staff and research trainees should be directed to the DVC(R). Allegations involving possible breaches of the *Australian Code for*

the Responsible Conduct of Research are dealt with in accordance with the *UNSW Research Code of Conduct*.

11. Additional Operating Guidelines

Research Export Controls operating guidelines in support of this Procedure, such as rulings on record keeping, monitoring and auditing are approved by the DVC(R) and displayed in their most current form on the Research Export Controls [website](#).

12. Review & History

Version 1.0 of this Procedure was developed to facilitate compliance with the *Defence Trade Controls Act 2012*. The Procedure is scheduled for review every three years

Version	Authorised by	Approval date	Effective Date	Sections modified
1.0	Vice-President and Deputy Vice-Chancellor (Research)	31 March 2016	2 April 2016	New document.