

Safeguarding Australia's Military Secrets (SAMS) Act 2024 and Defence Trade Controls (DTC) Act 2024

Summary

On 27 March 2024, the Australian Parliament passed the [Safeguarding Australia's Military Secrets \(SAMS\) Act 2024](#) and the [Defence Trade Controls \(DTC\) Amendment Act 2024](#) in support of Australia's efforts to implement the AUKUS partnership.

These Acts will significantly impact companies employing former defence personnel and/or supplying defence products and services or civilian products with potential dual use for defence purposes.

The SAMS Act 2024 regulates the work of former ADF and APS Defence staff, as well as Australian citizens and permanent residents, and may necessitate variations to employment agreements.

The amended DTC Act 2024 puts additional export controls on supplying Defence and Strategic Goods List (DSGL) goods and services.

Safeguarding Australia's Military Secrets (SAMS) Act 2024

The SAMS Act 2024 creates a scheme for issuing foreign work authorisations to former defence staff and other individuals who wish to work for, or provide specified training to, foreign military organisations, foreign governments and foreign government bodies.

A "government body" is defined to include public enterprises, a term which covers any company where a foreign government can exercise formal or informal control over the company. This could include:

- National airlines
- Utilities
- Public universities
- Government funded think tanks

Note that the work **does not** require any connection to Australian military secrets or sensitive information.

Who does the SAMS Act apply to?

Former Defence Staff

The legislation applies to the following individuals who may be performing any kind of direct or indirect work or advice (whether paid or not) to foreign governments:

- Former members of the Australian Defence Force and the Australian Submarine Agency;
- Former members of the Department of Defence, including public service members.
- Members of the Reserves who have rendered full-time service.

Former Defence contractors, consultants and outsourced service providers are not classed as former defence staff and are not foreign work restricted individuals under the SAMS Act.

All Australian Citizens and Permanent Residents

Separately, it also applies to all Australian citizens and permanent residents, regardless of employment history, where that individual is providing training to foreign military organisations, governments or government bodies in relation to:

- goods, software or technology within the scope of Part 1 of the DSGI; or
- military tactics, techniques or procedures.

Criminal offences

Working without the relevant foreign work authorisation is a criminal offence with a penalty of up to 20 years imprisonment.

Similarly, failing to adhere to a condition of a foreign work authorisation is a criminal offence, carrying a penalty of up to 5 years imprisonment.

Foreign Work Authorisations

Individuals meeting the SAMS Act criteria must apply for a Foreign Work Authorisation through the [MADE portal](#). Defence advise that applications may take a *minimum* of 60 business days to process, however there is an avenue for priority processing.

It is important to note that the authorisation is granted to individuals, not companies, and therefore individuals are expected to personally apply. The Minister retains the authority to grant, refuse, cancel, suspend, or vary foreign work authorisations, as necessary.

Exceptions

The SAMS legislation provides for exceptions to ensure it only applies to the relevant individuals. Individuals do not require authorisation:

- To perform work or training to excluded foreign countries (U.K., U.S., Canada, and New Zealand).

- If the length of time associated with their previous role as a former ADF or APS Defence employee, has passed in compliance with the job family instrument.
 - Please check the following link to learn more about specific details of roles in Defence: [Job family legislative instrument - Defence \(Non-foreign work restricted individual\) Determination 2024](#)

There are other exceptions that may apply under specific circumstances.

Next steps for companies

Companies are encouraged to conduct a thorough review of their workforce and customer base to assess any potential risks that need to be addressed, including:

- **Inform Ex-ADF or Ex-Defence Civilians:** Ensure that any former Australian Defence Force (ADF) or Defence civilians are informed about the requirements of the SAMS Act.
- **Individual Work Permits:** Identify any foreign programs on which individuals are working and ensure that appropriate work permits are obtained.
- **Permit Application Process:** Individuals are responsible for completing their permit applications.

Defence Trade Controls (DTC) Act 2024

On 1 March 2025, the offence provisions of the *DTC Amendment Act 2024* took effect.

The *DTC Act* regulates the supply of military or dual-use goods and technology listed in the [Defence and Strategic Goods List \(DSGL\)](#) from Australia to certain foreign persons, both within and outside of Australia. It also regulates the provision of services related to DSGL Part 1 military goods or technology to foreign persons or entities.

Additionally, it removes the permit requirement for supplies of certain DSGL goods and technology and the provision of certain DSGL services to the United Kingdom or the United States.

Criminal offences

The DTC Act includes offences related to the supply of DSGL Goods, Technology and Services. These offences are specifically for the:

- Supply of DSGL technology to a non-exempt foreign person located outside Australia (section 10). This was the key existing offence prior to the amendments.
- Supply of DSGL technology to a non-exempt foreign person located within Australia (section 10A). This is a new offence under the amendments.
- Re-export of goods and technology on Part 1 (Munitions) and Part 2 (Dual Use) 'Sensitive' and 'Very Sensitive' Lists of the DSGL, where the goods or technology were previously exported or supplied from Australia (section 10B). This is a new offence under the amendments.
- Provision of services related to Part 1 of the DSGL to foreign nationals outside of Australia (section 10C). This is a new offence under the amendments.

The penalties for these offences include imprisonment for 10 years or a fine of 2,500 penalty units, or both.

Expansion of export control regime to cover in-country transfers

It is important to reiterate that Section 10A of the DTC Act applies to transfers of relevant DSGL technology that occur within Australia to non-exempt foreign nationals, including your employees.

This marks the first instance where in-country transfers to select foreign nationals will require a permit under Australian export control laws.

Exceptions

The DTC Act includes some exceptions for specific persons or activities. The complete list of exceptions for each offence can be found in the Act but some of the key exceptions are set out below.

Fundamental Research

Technology that has been produced in the course of, or for the purposes of, fundamental research is exempt from the offences in Section 10, 10A, 10B and 10C of the DTC Act.

AUKUS

There is a broad exception to the offences for transfers to recipients from the UK, US or Australia where the transfer takes place in the UK, US or Australia.

Importantly, however, there are other requirements for organisations and individuals to comply with before using this exception.

Security Clearance

Recipients with a security clearance of NV1 or higher (or equivalent in Five-Eyes countries) may receive DSGL Goods, Technology or Services without an export permit.

Foreign Country List

A [list of foreign countries](#) ("**Foreign Countries List**") has been enacted by the Department of Defence which exempts organisations or individuals from countries on the list from some of the offences.

All transfers to *your own employees* from countries on the Foreign Countries List are exempt from the offences in sections 10, 10A, 10B and 10C when the transfer is in the course of their employment duties.

Where the recipient is not your own employee but is an individual or company on the Foreign Countries list, there are other exceptions to the section 10A and section 10B offences subject to additional criteria being met.

Build-to-Print Exception

There is an exception to the offences where the transfer of technology is to a person or company *located within Australia* and the recipient produces components of DSGL goods but cannot reproduce the DSGL good as a whole from the technology transferred.

Services Five Eyes

There is an exception to offence 10C where the services are provided to a recipient from Australia, New Zealand, USA, UK or Canada.

SAMS Act

There is some interaction between the SAMS Act and the DTC Act offences. Goods and Services provided in accordance with a Foreign Work Authorisation under the SAMS Act are exempt from the offences in section 10A and 10C.

Next steps for companies

To ensure compliance with the DTC Act, consider the following key steps:

- **Check for Controlled Goods:** Review your operations to identify any dealings in controlled goods, particularly dual-use items.
- **Consider Workforce Demographics:** Note that items no longer need to be physically exported across borders to constitute an offence under the DTC Act.
- **Export Licences for Internal Transfers:** Determine whether export licences are required for internal workforce transfers and re-exports.

It is important to review your current practices and procedures to ensure compliance with the DTC Act.