

Defence Trade Controls Act 2012

Introduction – Obligations and Exemptions

(Prof Matthew Cuthbertson, Swinburne Research)

Does it Apply To Me?

(Dr Nitya Phillipson, Ethics and Integrity)

Examples and Discussion

(Kornel Koffsovitz, Legal & Governance)



Background - Australian Legislative Framework

Australia has committed to an international effort to regulate exports of items

- to be used for military applications; or which*
- contribute to development of weapons of mass destruction.*

Includes

- Customs Act 1901***
- Weapons of Mass Destruction Act 1995***
- Autonomous Sanctions Act 2011***
- Defence Trade Controls Act 2012***



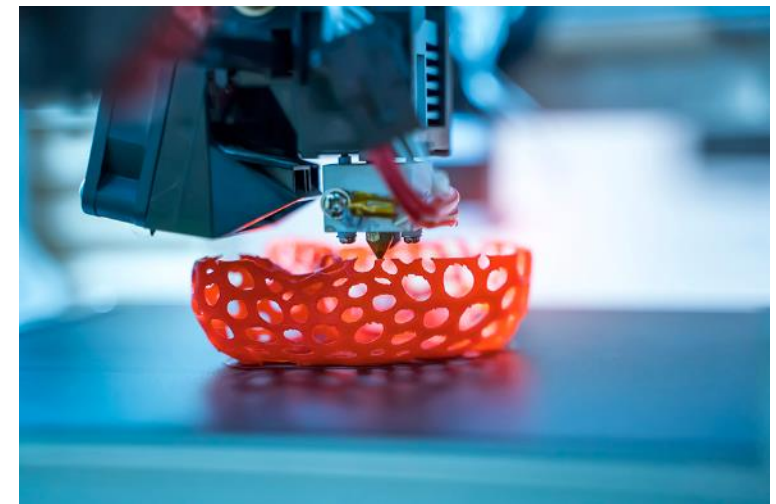
www.econlib.org/wp-content/uploads/2001/11/international-trade.jpg

Why should I care?

- ❑ From 2 April 2016 it has been an offence under the *Defence Trade Controls Act 2012* to **export** certain *controlled goods and technologies* without a **permit**.

- ❑ An offence can attract substantial penalties, and compliance is **individual responsibility** - for both academic researchers and students

- ❑ Three key concepts
 - Controlled good and technologies (DSGL)
 - Export
 - Permit



What are controlled goods and technology?

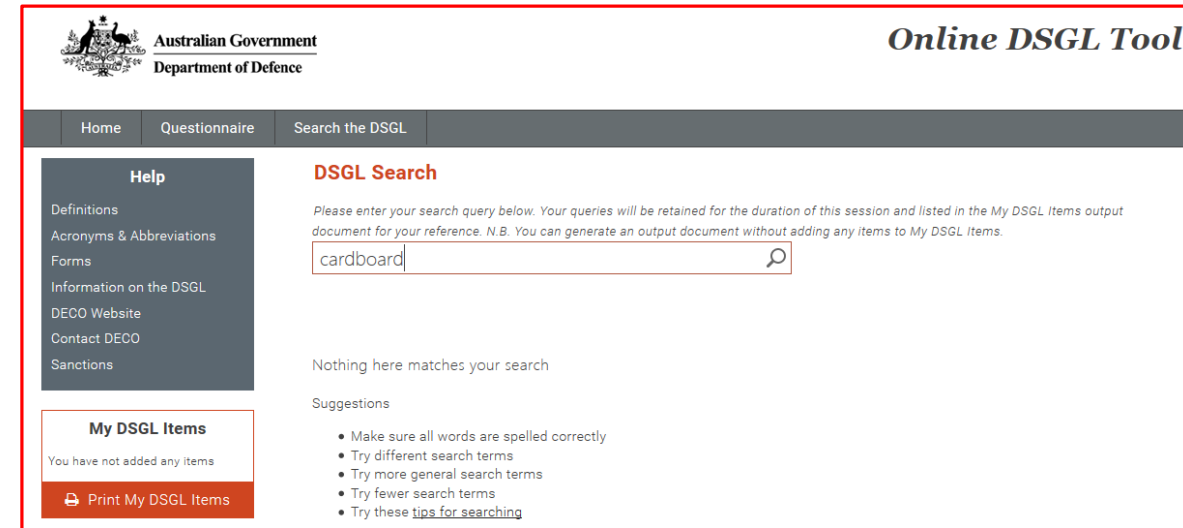
DSGL - Defence and Strategic Goods List

dsgl.defence.gov.au

The DSGL has two parts:

Part 1: munitions or military items;

Part 2: **dual-use** items; that may be used for civilian/commercial purposes, but may also be used in military systems or for weapons of mass destruction.



Australian Government
Department of Defence

Online DSGL Tool

Home Questionnaire Search the DSGL

Help

- Definitions
- Acronyms & Abbreviations
- Forms
- Information on the DSGL
- DECO Website
- Contact DECO
- Sanctions

My DSGL Items

You have not added any items

Print My DSGL Items

DSGL Search

Please enter your search query below. Your queries will be retained for the duration of this session and listed in the My DSGL Items output document for your reference. N.B. You can generate an output document without adding any items to My DSGL Items.

cardboard

Nothing here matches your search

Suggestions

- Make sure all words are spelled correctly
- Try different search terms
- Try more general search terms
- Try fewer search terms
- Try these [tips for searching](#)

What is listed in the DSGL?

- Nuclear materials
- Materials, chemicals, micro-organisms and toxins
- Materials processing
- Electronics
- Computers (and software)
- Telecommunications and information security
- Sensors and lasers
- Navigation and avionics
- Marine
- Aerospace and propulsion



DSGL Search – “Supercapacitor”

[Home](#)[Questionnaire](#)[Search the DSGL](#)

Help

[Definitions](#)
[Acronyms & Abbreviations](#)
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Please enter your search query below. Your queries will be retained for the duration of this session and listed in the My DSGL Items output document for your reference. N.B. You can generate an output document without adding any items to My DSGL Items.

Note: Users may occasionally experience problems with the search engine not returning any results. To confirm this fault; search for the term "cyanide". If no results are returned, please notify Defence Export Controls at djp.bss@defence.gov.au.

Filter by Part	Filter by Category	Filter by Sub Category	Filter by Item
PART 2 Dual Use List	CATEGORY 3 - ELE...	3A - Systems, Equi...	3A001
PART 1 Munitions L...	CATEGORY 4 - CO...	3C - Materials	3A002
	CATEGORY 9 - AER...	3D - Software	3A003
		3E - Technology	3A101
		3B - Test, Inspectio...	3A102
		SHOW MORE	SHOW MORE

Displayed below are the DSGL items that may match your search query. Any exact matches appear in bold. This search tool uses a database of commonly-used synonyms, so your specific search term may not appear in the item at all.

About 35 results

High explosive containment vessels

Item No.: 3A234 PART 2 Dual Use List > CATEGORY 3 - ELECTRONICS > 3A - Systems, Equipment and Components
not apply to "technology" for integrated circuits specified by **3A001** a.3. to **3A001** a.12 ... they include libraries implementing functions or technologies for items specified by **3A001** ...

Direct current power supplies

Item No.: 3A227 PART 2 Dual Use List > CATEGORY 3 - ELECTRONICS > 3A - Systems, Equipment and Components
not apply to "technology" for integrated circuits specified by **3A001** a.3. to **3A001** a.12 ... they include libraries implementing functions or technologies for items specified by **3A001** ...

Striplines for detonators

Item No.: 3A235 PART 2 Dual Use List > CATEGORY 3 - ELECTRONICS > 3A - Systems, Equipment and Components
not apply to "technology" for integrated circuits specified by **3A001** a.3. to **3A001** a.12 ... Note 1: The control status of equipment and components described in **3A001** or 3A002, other ...

Multipoint initiation systems

Item No.: 3A232 PART 2 Dual Use List > CATEGORY 3 - ELECTRONICS > 3A - Systems, Equipment and Components

DSGL Search – Supercapacitor Example

Add to 'My DSGL Items'

Return to Search

DSGL Item Details - 3C002

PART 2 Dual Use List / CATEGORY 3 - ELECTRONICS / 3C - Materials

3C002 Resist materials as follows and “substrates” coated with the following resists:

- a. Resists designed for semiconductor lithography as follows:
 1. Positive resists adjusted (optimised) for use at wavelengths less than 193 nm but equal to or greater than 15 nm;
 2. Resists adjusted (optimised) for use at wavelengths less than 15 nm but greater than 1 nm;
- b. All resists designed for use with electron beams or ion beams, with a sensitivity of 0.01 $\mu\text{coulomb}/\text{mm}^2$ or better;
- c. Not used;
- d. All resists optimised for surface imaging technologies;
- e. All resists designed or optimised for use with imprint lithography equipment specified by 3B001.f.2. that use either a thermal or photo-curable process.

What is listed in the DSGL?

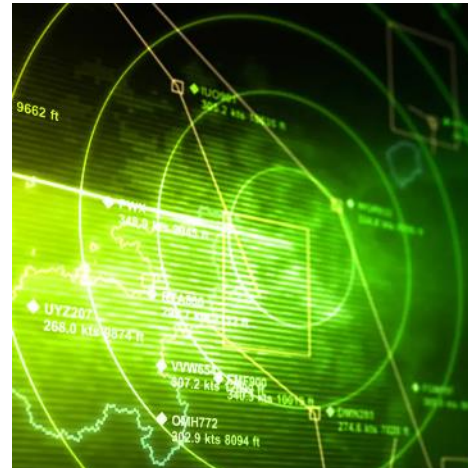
DSGL is vast, complex and growing all the time

- **General search terms return multiple hits, but**
- **Individual entries are detailed and very specific**

Searching DSGL is something you can't delegate - requires care and expert knowledge



https://climateandsecurity.files.wordpress.com/2012/06/australian_peacekeepers



www2.deloitte.com/content/dam/Deloitte/au/Images/



<http://cbsnews1.cbsistatic.com/hub/i/2013/09/11/>

Key Concepts - What is Export?

Where goods or technology from Australia are internationally

- **Published or**
- **(intangibly) Supplied**
- **Brokered**
(act as intermediary, little relevance to Swinburne)



https://glencoreagriculture.com.au/wp-content/uploads/2017/04/Global-Map-Export_170427.png

What is Publication?

Information is 'published' where it is made available to the public or a section of the public.

Publication includes: journal articles, conference papers, blogs, websites and social media.

Except where a *General Exemption* applies:

- A permit **IS required** where the publication is for **military use** technology.
- A permit **is NOT required** for the publication of **dual use** technology.



<https://www.enago.com/publication-support-services/images/home-banner-img.png>

What is Supply?

The “**intangible supply**” of information occurs if a person in Australia provides controlled technology in a non-physical form to another person outside of Australia.

➤ Common example: private communications during the course of a project

Unless a *General Exemption* applies:

- a permit **IS required** for the supply of **military** goods and technology.
- a permit **IS required** for the supply of **dual use** goods and technology.

General Exemptions

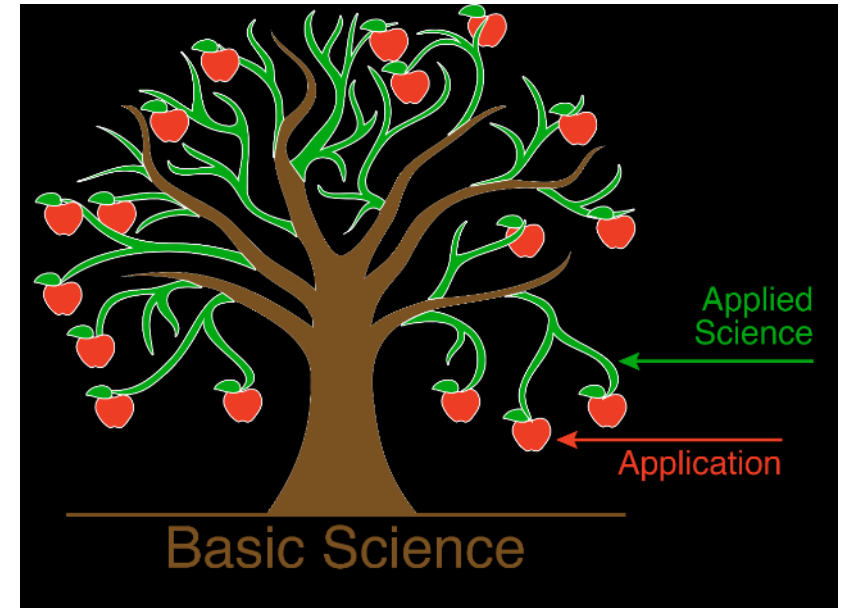
You DON'T need to apply for a permit if:

- > you are supplying technology that is already *in the public domain*
- > your work is on medical equipment specifically designed for **medical end use**
- > the supply amounts to the minimum requirement for a patent application
- > the supply is to (some) government and security agency employees
- > the supply is verbal (dual use only, without any digital exchange)
- > your work is **“basic scientific research”**.

General Exemption: Basic Scientific Research !

“Experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts”

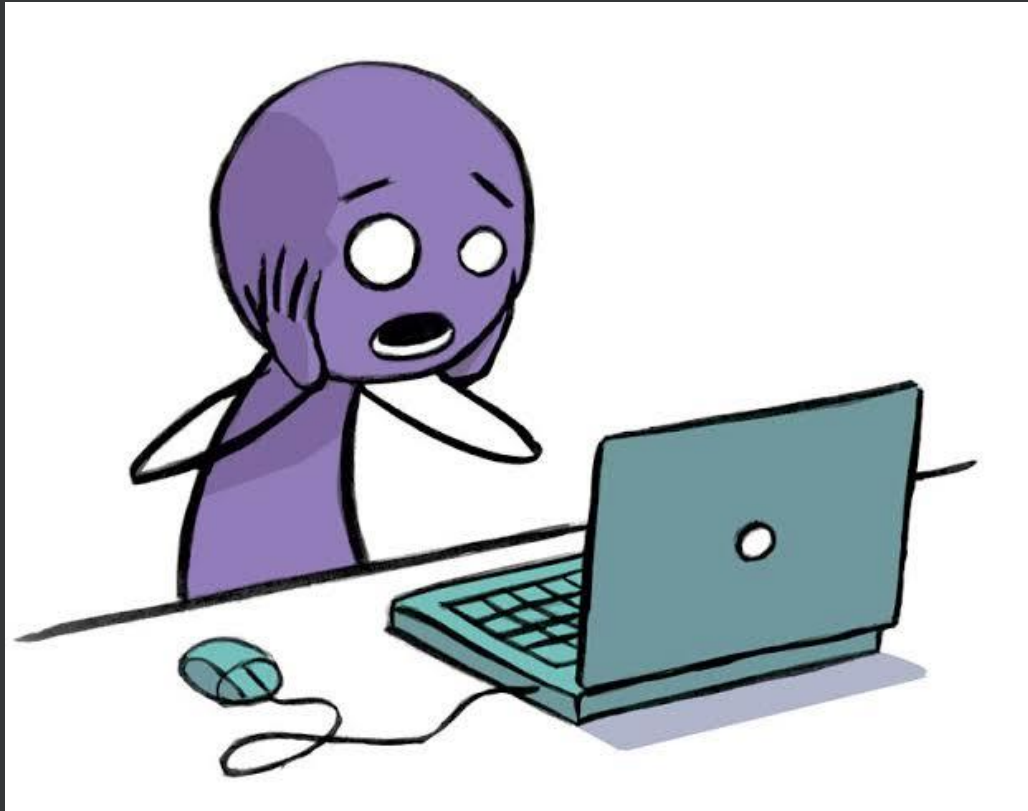
- **This is a very broad exemption**
- **Highly relevant to academic researchers**



<http://www.pro-test-deutschland.de/wp-content/uploads/2015/11/BasicScience>

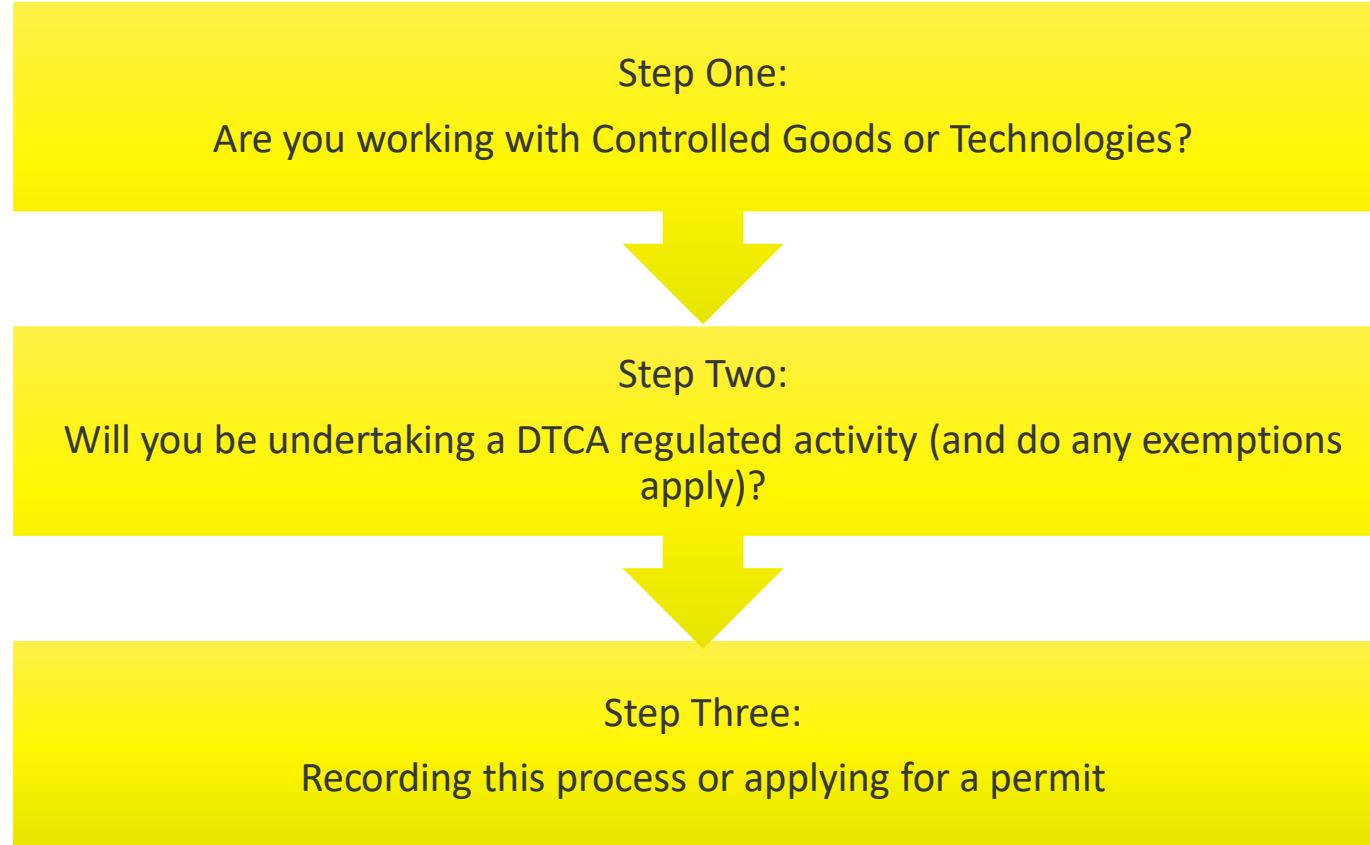
DOES IT APPLY TO ME?

(Nitya Phillipson)



How Do I Know If The DTCA Applies To My Research?

- **For your research to come under the DTCA you must:**
 - Be supplying publishing or brokering a controlled good or technology out of Australia and;
 - The goods or technology must be listed on the [DGSL](#)
 - Exemptions do not apply



STEP 1 CONTROLLED GOODS OR TECHNOLOGIES

- Are you working with Controlled Goods or Technologies?
- Search the DSGL using DEC Online DSGL Tool - <https://dsgl.defence.gov.au/Pages/Search.aspx>
- You should search for:
 - The good and/or technology itself, using all relevant names, titles or abbreviations
 - Related materials, equipment, software or technology, using all relevant names, titles or abbreviations
- **If the Good or Technology is listed > click on the search results to view the technical specifications/performance**
 - Some items are listed in their own right
 - Some items are “controlled” in particular circumstances – eg. when used for the development of a controlled item
- **If the Goods or Technologies (or their components)**
 - are listed > Proceed to Step 2.
 - are not listed > Proceed to Step 3.

STEP 2 IS IT REGULATED ACTIVITY

- **Are you undertaking a regulated activity?**
 - Export or Supply
 - Publication
 - Brokering
- **Consider:**
 - Will you be transferring or publishing the Goods / Technologies outside of Australia?
 - Do you have collaborators outside of Australia?
- **Assess**
 - <https://dsgl.defence.gov.au/Pages/Home.aspx>
 - select Activity Questionnaire
 - Email DTCA@swin.edu.au a copy of the report

STEP 2 DO EXEMPTIONS APPLY

- Basic Scientific Research
- Work in the public domain
- Medical equipment
- Verbal Supply
- Publication
- Pre-publication supply
- Patent applications
- Supply to government or security agency employees

STEP 3 PROGRESSING WITH YOUR RESEARCH

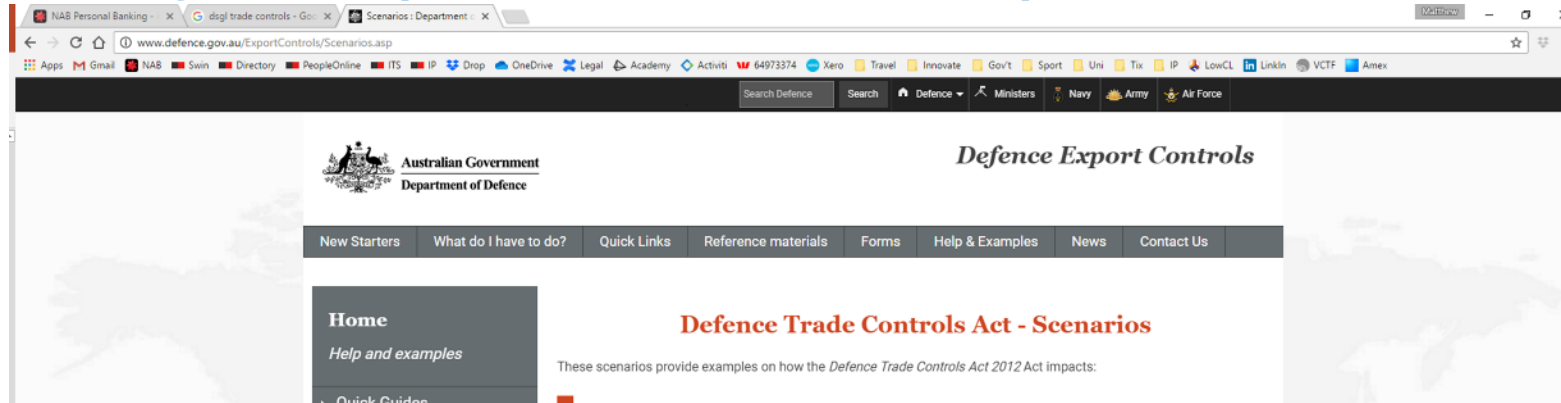
- If the result of the DEC Activity Questionnaire is that you are working with controlled DSGL Goods or Technologies and no exemptions apply, a permit may be required
- **Please do not apply for a permit yourself**
- Contact the research office DTCA@swin.edu.au
 - Provide a copy of the assessment report, DSGL search terms
 - Provide a brief description of the research under question

We will let you know what happens next.

RESOURCES?

DEC Website includes a wealth of information, includes various scenarios

<http://www.defence.gov.au/ExportControls/Scenarios.asp>



Our webpage also contains lots of information

<https://www.swinburne.edu.au/research/ethics/biosafety-and-defence/defence-trade-control-compliance/>



Examples and Discussion

(Kornel Koffsovitz)

PUBLICATION- EXAMPLES

- Arthur is a Swinburne employee located in Australia, he publishes an article which contains Munitions DSGL Technology (Part 1).
 - This activity is regulated and requires approval. Arthur must obtain a permit before publishing the article.
- Ben is a Swinburne employee located in Australia, he publishes an article which contains Dual-use DSGL Technology (Part 2).
 - This activity is not regulated and a permit is not required.

INTANGIBLE SUPPLY- EXAMPLES

- Alice is a Swinburne employee located in Australia, she emails a drop box link containing blueprints of a DSGL Technology to Adam, an employee of the University of Paris located in France.
 - A supply has occurred and a permit will be required unless an exemption applies.
- Bill is a Swinburne employee located in Australia, he emails DSGL Technology to Sam, who is also a Swinburne employee but located in China.
 - Whilst a supply has occurred permit is not required because the supply is occurring within the same legal entity. If Sam further disseminates this to a non-Swinburne employee a permit may be required. N.B. Swinburne Sarawak is not the same legal entity as Swinburne University

SCENARIOS?

Can I take my laptop overseas?

- Does your laptop contain DSGL Technology (such as files or software)?
 - If yes and you are intending to use the laptop to share or supply DSGL technology overseas a permit may required.
 - If yes and you are using your laptop for other business unrelated to the DSGL technology a permit may not be required.

SCENARIOS?

Do I need a permit to present at an overseas conference?

- General presentation to a group of colleagues (for example) that does not include highly technical information, not need a permit
- Highly technical presentation which includes the specific details of DSGL Technology- a permit will be required unless an exemption applies.

SCENARIOS?

Can I use cloud technology to store and access my data?

- You can store your data in the cloud and personally access and use it regardless of your physical location
- You cannot use cloud or other sharing technology, as a means to share DSGL Technology with others located outside Australia (without a permit)
- *If DSGL Technology is uploaded to a cloud service in Australia, with the intention of supplying that technology to another person outside of Australia, a permit is required.*

CONTACT US

DTCA@SWIN.EDU.AU

<https://www.swinburne.edu.au/research/ethics/biosafety-and-defence/defence-trade-control-compliance/>

