Office of Research Ethics and Integrity

Internal Compliance Plan Standard Operating Procedures

Trade Controls

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### Revision History log

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**Approvals**

**Version 1.0**

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Preamble

This Standard Operating Procedures is to be read alongside the QUT Risk Management Framework MOPP A/2.5 Defence Trade Policy MOPP D/2.5 and Compliance MOPP A /1.3 and Research Governance Framework MOPP D/2.3.

The Trade Controls Compliance Officer in the Office of Research Ethics and Integrity (OREI) is the university’s primary contact with the Department of Export Controls Office (DECO). This means that all contact with DECO is done through the Trade Controls Compliance Officer.

Identification and Assessment

Technology Control Plans

Project Closure

Project Variations

Figure 1 – Trade Control Lifecycle

The four key elements in the trade control lifecycle constitute the QUT Internal Compliance Plan.

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**Definitions**

**Basic Scientific Research** any technology which extends only to the fundamental principles of phenomena or observable facts and is not primarily directed towards a specific practical aim or objective.

**Brokering** when a person acts as an agent or intermediary in arranging the transfer of controlled goods and technology between two places located outside Australia and receives money or non-cash benefit, or advances their political, religious or ideological cause.

**Controlled Technology** relating to goods means:
- (a) Information relating to the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of the goods (including information in the form of blueprints, drawings, photographs, plan, instructions, specifications, algorithm’s or documentation); or
- (b) Software relating to the goods
- (c) Within the scope of the Defence Strategic goods List (DSGL).

**Defence Export Control Office (DECO)** is 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.

**Defence Strategic Goods List (DSGL)** is a compilation of goods, software and technology that is regulated when exported, supplied, brokered or published. Goods listed on the DSGL may not be exported from Australia unless a licence or permission is granted by the Minister for Defence, or an authorised person. The DSGL is defined into two separate parts:
- Part 1: lists munitions (or military) items; and
- Part 2: list a dual-use item, which is items that may be used for commercial purposes, but may be used in military systems or within weapons of mass destruction (WMD) programs.

Export Administration Regulations (EAR) is the US regulation for Dual Use goods and services and is additional regulations to be observed concurrently with Australian regulations and trade laws.

**Export Control Regimes** describe the international conventions and regimes relating to export controls that Australia is a party to. They are:
- Wassenaar Arrangement Est. 1995
- Australia Group (AG) Est. 1985
- The Nuclear Suppliers Group (NSG) Est. 1974
- The Missile Technology Control Regime (MTCR) Est. 1987
- The Chemical Weapons Convention
- The Biological and toxin weapons Convention (BTWC)
International Traffic in Arms Regulations (ITAR) is the US regulation that regulates and controls the US Munitions list and to be observed concurrently with Australian regulations and trade laws.

Information Security Plan (ISP) QUT’s information technology security management plan for the transmission, storage and classification of information and technologies.

Publishing placing controlled technology in the public domain by publishing on the internet or otherwise.

Supply when a person in Australia provides controlled technology in a non-physical form to another person outside of Australia. ‘Supply’ includes supply via email or fax, or by providing someone outside of Australia with passwords to access controlled technology stored electronically.

Technology Compliance Plan the documented and approved process for the management of control related activities for specific research projects.
Section 1: IDENTIFICATION and ASSESSMENT

This section of the Standard Operating Procedures provides an overview of trade controls which includes:

- basic information about the Trade Control Laws;
- basic information about foreign trade controls;
- obligations of supervisors and researchers;
- goods and technology that are listed on the Defence and Strategic Goods List (DSGL);
- items exempt from export controls; and
- how to undertake an initial assessment of goods and technologies that may require an approval or permit.

SOP 1

1.1 Trade Controls

Trade controls are a system of laws and regulations (See Appendix 1) prohibiting unlicensed export and import of controlled technology for reasons of national security, foreign policy and economic protection.

In Australia, the Customs Act 1901 (Prohibited Exports) Regulations 1958 – Regulation 13E provides the legislative basis for the tangible export and prohibits certain goods and technologies listed in the Defence and Strategic Goods List (DSGL) from being exported from Australia without a license or permit. The DSGL is described in two parts.

- 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 WMD.


The Defence Trade Controls Act 2012 provides the legislative requirements for the controls of intangible activities of controlled goods and technologies listed within the DSGL from being transferred to individuals, states or groups of concern for military or weapons of mass destruction (WMD) use.

The Act specifically regulates three areas of activities. These are:

- The intangible supply (transmission by non-physical means) of controlled technology from a person in Australia to a person outside Australia
- Publishing controlled military technology
- Brokering controlled goods and technology for Military or a WMD end use.

Controlled goods and technology listed in the DSGL are subjected to assessment under the legislative regime and may require a permit or approval for export, supply, publishing or brokering.
SOP 2

1.2 Foreign Trade Controls

Australia must comply with any Foreign Trade Control regimes of the United States (US) and Europe Union. US export controls are extra territorial and apply concurrently with Australian Trade controls. All exports of US ‘origin’ or derived technologies, software or goods will require relevant US authority to enable re-transfer to other recipients.

All Australian DSGL controlled technologies entering or transiting through the USA may require the approval of the applicable US governmental department before entry.

Foreign trade controls relating to the University sector include:

United States:

- International Traffic in Arms Regulations (ITAR) regulates the export, re-export and re-transfer of defence articles listed on the United States Munitions List (USML) and conditions regarding embargoed countries or nationals;
- Export Administrations Regulations (EAR) governs the export, re-export and re-transfer of military and commercial items under the Controlled items Commerce Control List (CCL).

Europe Union:

- EU Trade Controls form part of the Community’s Common Commercial Policy. These Policies are similar to Australian Trade control regulations.

For all trade related enquiries concerning the US and EU you will need to contact the Trade Controls Compliance Officer to assist you.

SOP 3

1.3 Obligations of the university, supervisors, researcher

Trade controls are designed to only capture sensitive goods, software and technology for use in military or weapons of mass destruction (WMD) programs. If the goods or technology to be exported are not listed on the DSGL then the act does not apply. If the goods and technology are listed on the DSGL, a permit or approval may be required if:

- the activity being undertaken is export, supply, brokering and/or publishing;
- the intended recipient is identified as a listed sanctioned country or individual; and
- no exemption is available for use.

The obligations for the university are to:

- assist the researcher in the identification and application of approval or permits for goods, software and technology that fall within the trade control laws through the service of the Trade Controls Compliance Officer;
maintain full records of approval or permits and applicable documentation;
conduct audits from time to time to ensure the conditions of the approval or permit are met; and
report any non-compliance to DECO.

The obligations of the **Trade Controls Compliance Officer** are:

- provide trade controls guidance to relevant sections of the University as necessary;
- Assist researchers and project supervisors on obligations and Technology Control Plans (TCP) for controlled technology;
- develop training for the researchers on trade controls;
- act as the QUT delegate for liaising with DECO for all permit and trade related enquiries;
- report to the Director of Office of Research Ethics and Integrity any alleged breaches of the permit or approvals issued by the Australian Government under the Trade Controls law.

The obligations for the **researcher** are to:

- consider how the goods and technology as listed in the DSGL are to be used;
- seek a permit or approval for goods, software and technologies subject to controls;
- use the controlled technology only as approved or permitted;
- maintain full records of use for the purposes of audit and review;
- maintain records of all supply made under a permit for 5 years post completion of the research project;
- dispose of any controlled goods, software and technology as described or required under the permit conditions permit;
- cooperate in any internal or external audit or review process; and
- exercise ‘due diligence’ with their collaborators.

The obligations of the **supervisor** are to:

- exercise ‘due diligence’ to their areas of responsibility for trade controls;
- review and authorise the technology compliance plan for all controlled technologies used within the School for the purposes of research.

Penalties are significant for violations of the DTCA 2012 for the university and/or the individual. Penalties may also be applied against the university from all the Acts associated with Trade Controls concurrent with the DTCA 2012. Offences under these Acts carry civil and criminal penalties.

**SOP 4**

**1.4 Exemptions**

The DSGL does contain some exemptions available in replacement of obtaining an approval or permits. These exemptions are:
• technology already within the public domain;
• technology that is ‘basic scientific research’ (see definition);
• the minimum information necessary for patent applications with the exclusion of nuclear technology listed in category 0;
• Medical equipment specially designed for medical end-use – applies to equipment that incorporates an item controlled in the dual use (part 2) of the DSGL;
• Supply made orally for Part two DSGL technology (phone or in person); and
• Preparatory for publication part two DSGL technology – to a publisher, peer-reviewed, co-author or for expert comment.
• Brokering to a listed country – or wholly within the listed country


SOP 5

1.5 Assessment of potential controlled goods and technology using DECO tool
The following procedures apply to goods, software and technologies that are potentially controlled under the Defence and Strategic Goods List (DSGL).

Researchers must determine if their goods and technologies:

• are listed within the DSGL;
• fall within the control thresholds or have an applicable exemption; and (See SOP 4 and Definitions)
• likely to be exported from Australia by way of supply, publication or brokering.

1. Controlled Goods and Technologies

Controlled goods and technologies may exist in the following forms:

Tangible
• All physical components or commodities, information in print, on USB or stored on laptops.

Intangible
• The export of technology which is required for the development, production or use of goods controlled in categories 1 to 9 and according to the provisions of Categories 1 to 9 (see definition of controlled technology)
  This technology remains under control even when applicable to non-controlled goods.
2. Defence Strategic Goods List (DSGL) categories:

The DSGL is split into two parts:

Part 1: Munitions list (or Military items); and

Part 2: Dual-use items that are items that may be used for commercial purposes, but may also be used in Military systems or weapons of mass destruction and is divided into 10 categories and two lists:

- Category 0 – nuclear materials
- Category 1 – Materials, Chemical, Micro-organisms 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
- Sensitive List
- Very sensitive List

Supervisors and researchers who consider that their research, equipment, software or technology falls within the above categories will need to access the online DSGL tool to complete and initial assessment.

The online DSGL tool:

The online DECO, DSGL allows users to conduct text based searches of the DSGL to identify if the goods, software or technology are ‘controlled’. It has been specifically developed to display details of the relevant controls that exist and other controls that may apply to that particular good.

Important information when using the online DSGL tool:

- start the search by checking for the goods, software or technology that is being researched;
- check for any related materials, equipment, software or technology within the project scope – that is being used in the research;
- be as specific as possible in the use of search terms;

The steps to using the online DSGL tool are illustrated at Appendix 2.

Always contact the Trade Controls Compliance Officer if:
• the online DSGL tool indicates a positive ‘match’ for controlled goods, software or technology;
• after using the DSGL online tool you are still unsure if your research is controlled;
• to verify and validate a negative match result.

The Trade Controls Compliance Officer will confirm whether a Technology Control Plan (TCP) is required for the research project.

The Technology Control Plan Template can be found at Appendix 3 and hyperlink to TCP.
Section 2: Technology Control Plans

This section of the Standard Operating Procedures provides an overview of:

- the Technology Compliance Plan;
- permit application and approval process;
- data storage and security including international travel;
- email and records management

SOP 6

2.1 Technology Control Plan

If an initial assessment and discussion with the Trade Controls Compliance Officer identifies the goods, software and technology are controlled:

- complete all aspects of the Technology Control Plan and
- submit to the Trade Controls Compliance Officer, Office of Research Ethics and Integrity (OREI) (See Appendix 3).

Final approval delegations are with the Deputy Vice Chancellor Research and Commercialisation.

SOP 7

2.2 Permit application and approvals

The Trade Controls Compliance officer will conduct a search of QUT’s permit register to identify if an existing permit is available for use or if a new DECO application will be required.

The Trade Controls Compliance Officer will update the researcher on the status of any DECO permit applications.

There are various types of exporting permits available for controlled goods. The Trade Controls Compliance Officer will work with the researcher or project supervisor to obtain the most relevant permit or approval for the project. This may include the following:

- AUSGELs – broad permit to 25 pre-determined countries that are signatories to regimes;
- Blanket permits – 5 year terms, listed End users and Countries for specifically identified DSGL technologies;
- Specific Permits – applied for on a case by case basis, which may include one off shipments or project time specific or multiple shipments to multiple end users.
- Other permits may be advised by DECO as more suitable at the time of application and after assessment.
For foreign trade control, you may be required to provide evidence of importation approval of DSGL controlled goods and technologies to assist with any re-export permit approval.

Permits often have conditions outlined as part of their approval process. This will require strict recordkeeping for the purpose of DECO Audits. The Trade Controls Compliance Officer will advise the applicant of any conditions associated with their permit.

Any reporting requirements required under a permit will be conducted and provided by the Trade Controls Compliance Officer.

**SOP 8**

### 2.3 Data storage and security (include international travel)

Where the researcher is dealing with controlled goods, software and technologies, storage and security arrangements must be discussed with the Manager, Information Security. The researcher in consultation with the Manager, Information Security will complete an Information Security Plan (ISP) and this must be attached to the TCP.

An ISP will ensure the following:

- use of encryption software for the management of all related files, data management plans and email;
- secure storage of goods and technology with restricted access to those collaborating on the project;
- access arrangements for goods and technology reflect the listed personnel where appropriate;
- that permits are in place before leaving the country with controlled technology on laptops, USBs, flash drives or any electronic device;

**Note: it is prohibited to take controlled goods, software or technology overseas until you have written approval from the university. Without written approval from your institution your laptop or device risks may be confiscated at the border (i.e. Airport) and penalties may apply.**

- All technology protected under the TCP must not be disclosed on social media sites – e.g. twitter or websites that are publically available;
- All projects subjected to a TCP must be treated as protected (refer MOPP F/1.2 Information security and MOPP F/1.9 Corporate Asset Management)

**SOP 9**

### 2.4 Emailing and records management

Emails related to a permit for the supply of controlled technology must be kept in both electronic and hardcopy for 5 years post project completion.

The following statement must be annotated within the email context:
The following documentation must be retained in both hardcopy and electronic version on a secured server for 5 years post completion of the project:

- all technical or research documents;
- all applicable shipping documentation for offshore transactions;
- variations or amendments to this TCP;
- records of supply transactions;
- permits, notices or approvals;
- a signed and executed copy of the TCP;
- any material transfer agreements applicable; and
- any related documents to technology provided by a third party (sponsor).
Section 3: Project variations

This section of the Standard Operating Procedures provides an overview of:

- project variations and amendments;
- internal and external monitoring; and
- non-compliance and suspicious activity notification

SOP 10

3.1 Project variations requiring permit changes
A variation to a project using trade controlled goods, software and technologies may include:

- changes to research staff;
- changes to the research programme or activity that involve any trade controlled goods, software and technologies (adding or deleting);
- changes to information security
- changes to physical security; and
- any additional overseas travel not identified in the original TCP.

The researcher is to complete and submit a TCP Variation form (See Appendix 4) to the Trade Controls Compliance Officer for the re-assessment and request for approval or permit variation to DECO.

The researcher must not conduct any activity as described in the variation until an approval or permit permission is obtained and supplied.

SOP 11

3.2 Monitoring processes for internal and external purposes
The Office of Research Ethics and Integrity (OREI) will periodically monitor/audit any research conducted under a TCP.

Internal audits are an integral part of a robust Export Control Management System (ECMS) to detect, correct and prevent potential violations before external audits are conducted. Audits may be conducted from time to time or as required under the permit conditions.

SOP 12

3.3 Notification of non-compliance or suspicious activity request
Project supervisors must immediately advise the Trade Controls Compliance Officer of any suspected breach of approvals or permit conditions. All suspected breaches in Information security must be reported to the QUT Manager, Information Security.

Non-compliance can be the following:
- supplying controlled technology to end users/countries not authorised on the approval, permit or notice;
- travelling internationally with controlled technology on an unauthorised electronic device or USB;
- new researchers collaborating on the project before TCP amendment is completed;
- unauthorised access or usage of controlled goods, software and technology.
Section 4: Project closure

This section of the Standard Operating Procedures provides an overview of:

- process for project termination; and
- permit cessation.

SOP 13

4.1 Project Termination

The obligations under issued permit and approval continue as long as the controlled goods, software and technology remain in the possession of the university, researcher or supervisor. Disposal of controlled goods, software and technologies should be coordinated with the Trade Controls Compliance Officer.

All records including hardcopy emails and project documentation pertaining to the controlled goods, software and technologies allowed under a permit or approval will be retained in accordance with university policy and all applicable legislation.

All security requirements in place for the storage or access to the controlled goods, software and technologies will remain in force until eligible for destruction.

Should at any stage the security measure in place be compromised, the project supervisor is responsible for notifying the QUT Manager, Information Security officer in the first instance of the breach.

The Director of Office of Research Ethics and Integrity will consider any reported alleged breaches of the permit or approvals issued by the Australian Government under the Trade Controls law.

SOP 14

4.2 Permit cessation

Should additional exporting be required that relates to the current permit or approval of controlled goods, software and technology, then consideration should be made to requesting variations to the original permit or approval. Contact the Trade Controls Compliance Officer to discuss.

Once the expiry dates as stated on the permit lapses, all exporting activities must cease. That permit may not be used for any further activities.
Appendix 1

Relevant Trade Control legislation and regulations

- Defence Trade Control Act 2012
- Defence Trade Control Amendment Bill 2015
- Customs Act 1901
- Military end-Use provisions (section 112BA) of the Customs Act 1901
- Charter of United Nations Act 1945
- Autonomous Sanctions Act 2011
- Wassenaar Arrangement Est. 1995
- Australia Group Est. 1985
- The Nuclear Suppliers Group Est. 1974
- The Missile Technology Control Regime Est. 1987
- The Chemical Weapons Convection
- The International Traffic in Arms Regulations (ITAR) (USA)
- The Export Administration Regulations (EAR) (USA)
Appendix 2

Identification process

1. Identification steps
The control of goods and technology can be complex. To assist researchers in identifying whether the research is within the DSGL and therefore controlled the following steps should be followed using the online DSGL search tool.

Step 1: Access the online tool developed by the DECO at the following link:


Figure 2 - DSGL search portal

Step 2: click on the DSGL search button and this will commence the search function you require. DECO has provided some search tips at the beginning of the search function to assist you on the system.
Step 3: input search parameters for the research activity

All returned results must be checked for a match against control thresholds.

Step 4 – applicable and possible controls to the search request will be displayed. All returned results must be checked for the technical specifications/ performance or General Technology Notes (GTN) against your research. (Figure 4)

Step 5 – once a ‘match’ is identified it must be added to ‘my DSGL list’ as illustrated in figure 4 for printing and submission to the Defence Trade Control and Compliance Officer for assessment against exemptions or permit requirements.

Step 6 – print this DSGL summary (hyperlink below for example) and submit to the Defence Trade Control and Compliance Officer with the completed Technology Control Plan (Appendix 3).
Step 7: if research is not listed within the DSGL you will be displayed the illustrated screen at figure 7 and no further action will be required providing that all possible scenarios have been assessed against the DSGL online tool checks. This result must be printed (print screen) and submitted for verification to the Defence Trade Control and Compliance Officer with a brief project description within an email.
Appendix 3:

Technology Control Plan and Plan amendment form

The Technology control plan template can be accessed via the link below.

TCP_draft16112015.xlsx

Check list to assist with completing the Technology Control Plan

A helpful checklist has been provided within the template for the Technology Control Plan to assist researchers.
Appendix 4

Technology Control Plan Amendment Form