

Defence Trade Controls Amendment Bill 2023 – Submission Guidance

1. Name

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2. Organisation/entity

Australian Industry Group (Ai Group)

3. Contact Details

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4. Which sector, country, organisation, or other group do your views represent?

- Industry

5. How will the proposed Defence Trade Controls Amendment Bill 2023 affect you/your organisation?

The proposed Bill would prompt members to undergo a comprehensive review of operations, compliance measures, and international engagements, joint ventures, and existing contracts and agreements to ensure compliance with the new regulatory framework. The impact includes operational considerations, increased compliance costs, legal risks, and challenges in managing supply chains.

6. What additional guidance or support from the Australian Government would assist you/your organisation to meet the proposed changes?

Clear and Comprehensive Guidelines: The government should provide clear and comprehensive guidelines explaining the specific changes introduced by the amendment.

Accessible and Timely Information: Regular and timely updates regarding the implementation of the changes, including any amendments or additional clarifications.

Training and Educational Programs: The government could offer training and educational programs to assist businesses in understanding the nuances of the new regulations. These should be specifically targeted at businesses in the broader defence supply chain.

Online Resources and Tools: Providing online resources and tools, such as interactive compliance checklists, FAQs, and decision trees, would assist Members in self-assessment and compliance planning.

7. What other comments do you have on the draft Bill?

Owing to the compressed consultation timeline, Ai Group has been unable to cross-reference Defence briefing with feedback from our Defence Council members. Ai Group members have expressed readiness to collaboratively refine the legislation's underpinning regulations in conjunction with Defence. Members look forward to the opportunity to collectively address and enhance insights as AUKUS commitments are progressed.

Ai Group Defence Council members commend the positive intent of the draft Bill, specifically acknowledging the license-free arrangement with AUKUS partners. However, a range of concerns have been raised, particularly regarding clarity around the scope and extent of the legislation; the very limited time stakeholders have had to review the legislation; the impact on non-Defence specific companies; and the potential cost of compliance.

While Defence companies have sophisticated export control systems in place, there is an increased risk for other companies within the broader defence supply chain who may now be caught by the legislation.

The broad scope of the Bill prompts questions about its practical application and potential for high compliance costs. Industry partners express a strong willingness to collaborate closely with the government through a consultative process to refining supporting regulations in a way that balances policy objectives with regulatory burden.

Concerns about managing exemptions within the legislation have been emphasised, with a specific call for effective handling to ensure compliance. While exemptions exist for supplies to the UK and the US, navigating and ensuring compliance with these exemptions could add complexity to international business operations.

Additional support for SMEs is recommended, including guidance, resources, and potentially streamlined processes, recognising their particular challenges and capacities.

Further detailed comments from Ai Group Defence Council members include:

Ai Group appreciates the engagement with Defence, however the timeframes have been very short to review a complex piece of legislation. As a result, the comments below reflect member inputs that Ai Group received, noting that Ai Group has been unable to cross-reference some of the member feedback with Defence. We look forward to further consultation and engagement as we progress on our AUKUS commitments.

DSGL ISSUES

There is continued uncertainty around any proposed exceptions and how they might be applied. The broad nature of the DSGL complicates the issue. This is especially with the ML22 category, as some data which would be considered extremely low risk within that category will now have the same restrictions imposed on it as higher risk data that warrants higher protections.

Clarification is sought whether this applies to both Part 1 and Part 2 DSGL as well (except for defence services).

Specific concerns on the three proposed changes received from Ai Group Defence Council members include:

- **Deemed Reexports:** Companies face challenges if similar ITAR 126.18(c)(2) exemption provisions are not implemented. Further clarity is needed if permits would be broad enough to cover programs, or would need to be sought for each specific occurrence (such as holding meetings with subcontractors or sending low risk information to another entity for quoting purposes).
- **Defence Services:** Some companies utilise a global pool engineering and maintenance talent. Global mobility allows these personnel to relocate and provide these services to different locations within global supply chains as operational needs require. Without clarity around proposed exemptions, there is a likelihood Australian personnel would be seen as a compliance risk and would not be able to be utilised in these roles. The expectation again is that a permission would need to be in place similar to the US licensing requirement for US Protected Persons. However, it needs to be clear how this will be applied and what restrictions would be in place with any resultant data.

- Retransfer of data: Some companies provide engineering services to their wider global group in both civil and military spheres. While the defence services issue would also impact this work, the second impact is the retransfer restrictions which will come into place.

While assurances have been extended that permits and exceptions will allow the absolute majority of situations, the increased compliance burden could potentially negatively impact companies whose supply chains and personnel pools extend beyond the AUKUS group, both financially and with threatened criminal penalties.

REGULATORY CLARITY:

Consider consolidation of certain sections to enhance clarity of the regulations, which will reduce confusion during implementation. For example, consolidate exceptions language in Section 10 -10C and make applicable to all.

WITHOUT PERMIT CAVEAT:

Administrative oversight in the Explanatory Memo, General Outline Section 3.b should include the same without a permit caveat for committing an offence.

A person would commit an offence if goods or technology on the DSGL that were previously exported or supplied out of Australia, are then supplied (or provided access to, in the case of technology) **without a permit** from a foreign country to:

CLAUSE #17:

Added new definition for “**DSGL services**” to Subsection 4(1):

17. DSGL services means the giving of assistance (including training) in relation to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of:

- a. DSGL goods or DSGL technology that are within the scope of Part 1 of the DSGL;
or
- b. any other DSGL goods or DSGL technology that are prescribed by the regulations;
or
- c. technology relating to DSGL goods to which (a) or (b) applies.

Recommend changing the entry to “**DSGL defense services**” to highlight it is only related to Part 1 of DSGL.

Delete paragraph “c. technology relating to DSGL goods to which (a) or (b) applies.” as it is redundant. Then delete the current 2012 DTC Act Subsection 4(1) definition for “**defence services**” which is almost identical, but in current form applies to DSGL Parts 1 & 2 but would no longer be needed.

CLAUSE #45

Paragraph 5C(2)(b) also requires that the DSGL services are received at a place in Australia, or the United Kingdom or the United States. An example of a DSGL services being ‘received’ at a place in Australia, the UK or the US could be where a person is engaged to assist a company located and incorporated in the UK with designing and developing an Aircraft Missile Protection System. This paragraph does not account for operational deployment scenarios by Australia, the UK and AU.

US DoS Guidelines for Agreements allows for transfers to operationally deployed forces. These changes should account for this as well.

- DTC Guidelines for Preparing Agreements Section 17(b) *“When the armed forces of [identify the foreign country or international organization] transfer defense articles outside the countries listed elsewhere in this agreement on operations or deployments in support of a U.S. or UN mission, all other Foreign or U.S. parties may transfer defense articles, technical data or defense services to the country of operation or deployment, provided such country is not proscribed by 22 CFR 126.1 or the subject of a U.S. or UN arms embargo.”*