Why Do We Have Export Controls?

- A member of numerous international counter-proliferation regimes, Australia is part of a global effort to regulate the export of items with Military and/or Weapon of Mass Destruction applications.

- Australia’s export control system aims to stop 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 concern.
What Does it Mean if Something is Export Controlled?

- Export controls do not necessarily prohibit export activity.
- Government approval may be needed to facilitate exports of controlled items.
- Export controls exist to ensure that controlled items are responsibly exported and that proliferation concerns are addressed.
Control Thresholds

- International export control regimes are conscious of the impact of export controls, therefore controls are designed to capture only what is considered necessary.
  
  - Controls apply to computers that are specifically designed to operate below -45°C or above 85°C, but only to the technology necessary for the computer to operate at these extreme temperatures. Technology that does not influence the computer’s ability to function at these extreme temperatures is not controlled.
Controlled Military Categories

- Military platforms and components
- Weapons and ammunition
- Chemical and biological warfare agents
- Explosives
- Electronic systems and equipment
- Software and technology
- Civilian firearms (pistols, rifles, shotguns), ammunition, accessories and production equipment
- Certain commercial explosives
- Airguns
Controlled Dual-Use Categories

- Nuclear Materials, Facilities & Equipment
- Materials, Chemicals, Micro-organisms, Toxins
- Materials Processing
- Electronics
- Computers
- Telecommunications and Information Security
- Sensors and Lasers
- Navigation and Avionics
- Marine
- Aerospace and Propulsion
Australia regulates the physical export of military and dual-use items, as listed by international regimes, under Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*.

Through the *Defence Trade Controls Act 2012*, Australia is joining others to address internationally-recognised gaps:

- Supply by electronic means
- Publication
- Brokering
Intangible Supply

• What is it?
  – When a person in Australia provides controlled technology in a non-physical form (i.e. electronically) to another person outside Australia.
  – Providing access to controlled technology, e.g. providing passwords to access electronic files.
Existing Gaps – Intangible Supply

• A permit is required if an Australian physically exports a controlled virus. However, if they email instructions on how to produce or enhance that virus, no permit is currently required.

• The Australian Government has no visibility or control over the electronic export of this information, including whether it is potentially destined for a biological weapons program.
Publication

• What is it?
  – Placing controlled information in the public domain by publishing it on the Internet or otherwise.

• Publication controls apply to anyone located in Australia, or an Australian citizen or resident located outside Australia.
Existing Gaps – Publication

• Once controlled technology is in the public domain, it is no longer possible to control who has access to it.

• Publishing this technology can put sensitive and potentially dangerous information into the wrong hands, and there can be limited prospect of regulating that information in Australia, or elsewhere in the world.
Intangible Supply vs Publication – What’s the Difference?

- If controlled technology is published by placing it ‘in the public domain’, even if it can only be accessed by a payment, it is a publication.

- If access to controlled technology is restricted to particular users or groups, it has not been placed ‘in the public domain’ and it will be a supply.
Brokering

• What is it?
  – 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.

• Brokering controls apply to anyone located in Australia, or an Australian citizen or resident located outside Australia.
Existing Gaps – Brokering

- If an Australian or a person in Australia arranges for weapons to be sent from one destination outside Australia to another destination outside Australia, currently no brokering permit is required.

- The Australian Government has no visibility or control over this brokering activity, including whether it is potentially destined for uses that may abuse human rights.
Getting the Balance Right

• These new controls are more challenging to regulate than physical exports.

• Significant concerns were raised by industry, university and research stakeholders about the impact of the *Defence Trade Controls Act 2012*.

• Government agreed to a two-year transition period (May 2013-May 2015), overseen by a Stakeholder-led Steering Group to address these concerns.
Strengthened Export Controls
Steering Group

- Report directly to Ministers for Defence and Industry
- Role: test legislation and recommend changes
- Chair: Australia’s Chief Scientist
- Representatives from industry, university/research, and Government
Progress to Date

• Established Pilot program with participants from university, research, and industry sectors.

• March 2013-September 2013 - Identify issues with the Act, and developed alternative approaches to:
  – Focus on those likely to be supplying controlled technology, and explicitly exclude others;
  – Reduce burden on those supplying controlled technology, commensurate with international practice;
  – Adopt a more balanced approach to managing publications; and
  – Reduce the scope of brokering controls to better reflect the policy intent and avoid unintended capture.

• September 2013-June 2014: Test alternative approaches.

• Public consultation on alternative approaches.
## Intangible Supply – Key Amendments

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<th>Then</th>
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<td><strong>Controlled military technology</strong></td>
<td>Permit required</td>
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<td><strong>New exemptions:</strong></td>
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<td>- Most verbal supply</td>
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<td>- Pre-publication supply</td>
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### Publication – Key Amendments

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<tr>
<td><strong>Controlled military technology</strong></td>
<td>Approval by Minister for Defence required</td>
<td>Approval required by Minister for Defence, but can be delegated</td>
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</table>
| **Controlled dual-use technology** | Approval by Minister for Defence required | No approval required  
MINISTER FOR DEFENCE CAN PROHIBIT A SPECIFIC PUBLICATION IF REASONABLY BELIEVES THAT IT WOULD PREJUDICE AUSTRALIA’S SECURITY OR INTERNATIONAL OBLIGATIONS |
## Brokering – Key Amendments

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<td><strong>New exemptions</strong> for brokering <strong>within</strong> or <strong>from</strong> most member states of the 4 main regimes:</td>
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<td>- Wassenaar Arrangement</td>
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<td>- Australia Group</td>
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<td><strong>Exceptions to brokering offences</strong> for:</td>
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<td>No permit required, unless:</td>
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<td>- notified by Defence, or</td>
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<td>- brokering for a WMD or military end-use</td>
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<td>(Exceptions do not apply to WMD brokering)</td>
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Additional Changes

• Maximum permit duration extended from current two years to up to five years or the life of a project.

• Regular legislative review after two years of operation (May 2017), and then in 5 year cycles.

• Streamlined licences for lower risk activities, such as general dual-use items going to member states of international counter-proliferation regimes.
Next Steps

• December 2014-February 2015: Steering Group considers outcomes of public consultation and provides its recommendations to Government on legislative amendments.

• Government/Parliamentary consideration of legislative amendments.
Implementation

• Defence is working with the Pilots and other stakeholders to develop tools, detailed guidance and training materials:
  
  – Guidance materials, including FAQs; procedural fairness mechanisms, privacy and information handling.
  
  – Online tool to help navigate the control list
  
  – Free online training modules, including sector-specific information.
  
  – Shared resources, including sample internal compliance frameworks and best practice guides.

• Offence provisions come into effect May 2015.
  – These will not apply retrospectively.
What Can Organisations do Right Now?

• Keep in touch with the DECO website for existing and new information. www.defence.gov.au/deco

• Organisations that are familiar with these controls in Australia and internationally are helping DECO to identify and resolve practical implementation issues.

• DECO will seek a single entry point in organisations that are not yet familiar with export controls to channel communication and assistance.

• For new stakeholders, consider: Am I working with items on the control list, and do they meet the control thresholds? If so, am I exporting, supplying, brokering or publishing?
Where Can I Find More Information?

- Defence Export Control Office:

- Strengthened Export Controls Steering Group:
Questions?