

Review of the Defence Trade Controls Act 2012

Recommendation	Assessment
GAPS IN THE ACT'S CONTROLS	
<p>The Department of Defence should work with stakeholders to develop a practical legislative proposal to address the following gaps in the <i>Defence Trade Controls Act 2012</i> (DTC Act):</p> <ul style="list-style-type: none"> • the limitation of the supply provision at section 10 that specifies that it applies only when certain locational criteria are met at the time of supply. • the lack of control over the transfer of technology not captured by the DTC Act's existing provisions but which, if transferred to foreign entities with interests contrary to Australia's, could prejudice Australia's security, defence and international relations. • the inadequate control of emerging and sensitive military and dual-use technology. <p>To ensure that any amendment does not unnecessarily restrict trade, research and international collaboration, the legislative proposal should:</p> <ul style="list-style-type: none"> • ensure all decisions are targeted and based on risk-related consideration of the technology being supplied, the end user and the end use. • contain measures to ensure transparency and scrutiny of decisions. • limit additional uncertainty, complexity and risk of inadvertent breaches. • minimise any increased compliance costs. 	<p>Supported. The Defence Exports Controls Branch (DEC) will establish a working group, led by an independent person, to develop options to address the identified gaps in the <i>Defence Trade Controls Act 2012</i> (DTC Act).</p> <p>The working group will consist of representatives from Defence and other relevant government agencies and university, industry and SME representatives to develop practical, risk-based legislative proposals to amend the DTC Act to enhance the government's ability to prevent the transfer of defence and dual-use technology to entities that may use it in a manner contrary to Australian interests or who are acting on behalf of a foreign power.</p>

<p>The Government should consider amending the definition of ‘arranging for persons to supply goods or DSGL technology’ (that is, ‘brokering’) in the <i>Defence Trade Controls Act 2012</i> to ensure that the provision clearly reflects the objectives of the Act. Any amendment to the legislation should be communicated effectively to affected entities.</p>	<p>Supported. As above.</p>
<p>The Government should consider triggering the general monitoring and investigation powers set out in <i>Regulatory Powers (Standard Provisions) Act 2014</i> for use by the Department of Defence to monitor and investigate compliance with the <i>Defence Trade Controls Act 2012</i> and ensure that additional properly trained staff are allocated to exercise these powers.</p>	<p>Supported. As above.</p>
<p>The Government should consider amending the <i>Defence Trade Controls Act 2012</i> to ensure that the Act’s objectives are achieved by ensuring that the regulation is independent of the technical method used to supply or publish technology.</p>	<p>Supported. As above</p>
<p>REGULATORY OVERREACH</p>	
<p>The Department of Defence should formally evaluate its two-step cryptography permit trial and decide whether the approach will be implemented on an ongoing basis. The evaluation should consider whether an alternative approach would be preferable and explore whether the clarification of existing thresholds would be sufficient or whether legislative amendment is required.</p>	<p>Supported. Defence will undertake an internal review of the two-step cryptography permit in 2019 to determine its continuing viability for both Defence and affected stakeholders. Defence will consult any proposed actions regarding the permit.</p>
<p>The Government should consider amending the <i>Defence Trade Controls Act 2012</i> to include employees of the Australian Nuclear Science and Technology Organisation (ANSTO) in the offence exemptions of sections 10(3) and 15, where the activities occur in the course of their duties.</p>	<p>Supported. This is a minor amendment that will exempt ANSTO officers from the provisions of the Act when undertaking activities in the course of their duties, in the same manner as APS, ADF, ASIO and ASIS employees are currently exempt.</p>

ADMINISTRATION OF THE ACT

The Department of Defence and other relevant Australian Government agencies should review the processing of *Defence Trade Control Act 2012* applications to ensure that processing times do not continue to exceed standards. The review should include resourcing requirements, particularly in light of any changes that are made to the legislation.

Supported. Defence Export Controls Branch continues to monitor processing times and implement improvements to processes to reduce administration and processing timeframes. Some applications require complex consideration and consultation. DEC is considering revising the standard processing time for complex applications to more accurately reflect the complex nature of the consideration and better manage applicants' expectations.

The Department of Defence (Defence) should allocate adequate resources to review the online tool for the Defence and Strategic Goods List (DSGL) in order to enhance the tool's accuracy and utility for researchers and other stakeholders. Defence should also consider developing other explanatory materials relating to the DSGL, including improved online training and refreshed case studies.

Supported. Defence will allocate resources to improve the DSGL online tool to enhance its usefulness for users. Defence will develop more comprehensive guidance and explanatory material to assist users to navigate the DSGL, and improve their ability to self-assess the control status of their goods and technology.

The Department of Defence (Defence) should allocate adequate resources to develop and deliver an effective program to ensure that key sectors, including university researchers and small and medium enterprises, are aware of their obligations under the *Defence Trade Controls Act 2012*. Defence should also explore partnering with other government or industry bodies to raise awareness.

Supported. DEC is reviewing its publicly available information on export controls and will continue to improve and deliver its outreach program to raise awareness about exporters' responsibilities under the DTC Act and broader export control laws.

Defence will explore options for partnering with other government or industry bodies to raise awareness about the DTC Act.