



Australian Government  
Department of Defence



# Australian Government

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## Department of Defence

Australia-U.S. Defence Trade Cooperation Treaty

**AUSTRALIAN COMMUNITY MANUAL**  
**Version 2.0 dated 10 November 2022**

Please contact Defence for all Treaty and Australian Community enquiries:

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# **1. An overview of the Australia-U.S. Defence Trade Cooperation Treaty**

## **1.1. Context and purpose of this manual**

This manual is intended to aid Australian defence industry to:

- understand the purpose of the Australia-U.S. Defence Trade Cooperation Treaty and the assistance it may afford Australian Industry and the Australian Government;
- become a participant in the Treaty;
- operate under the Treaty; and
- provide resources to assist existing and prospective Australian Community Members.

## **1.2. Introduction**

On 5 September 2007 the Australian and the United States (US) Governments signed the Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation (hereon referred to as the Treaty). The Treaty intends to improve the efficiency of eligible two-way transfers between Australia and the US by facilitating the export of controlled goods without the need for an export licence (subject to conditions stipulated in this manual). This was achieved through the creation of an Approved Community in Australia and the US, which includes government and non-Government entities and facilities. The Treaty's Implementing Arrangement (IA) of 14 March 2008, provides the necessary framework for Australia and the US to implement their legal obligations under the Treaty.

The Treaty provides benefits for both Government and the Australian Defence Industry. The scope of the Treaty is determined by three elements: membership, eligible articles and approved activities. These elements are explained in detail at section 1.3 of this manual.

The Treaty:

- reduces delivery time for new defence projects;
- improves sustainment, by permitting transfers within the Approved Community without the need for further Australian or US approvals;
- provides a more efficient way for US companies to share technical data with the Australian Community without licences;
- enables consistent compliance requirements across the Australian Community; and,
- avoids delays sometimes associated with the export licensing process.

Activities within the Treaty's scope already encompass a fair part of Australia's defence trade with the US. The list of eligible articles and end-uses is expected to expand through increased and continued use of the Treaty and increased confidence in Treaty processes.

The Treaty is an important arm of Australia's defence relationship with the US. It provides a mechanism for increased interoperability through more efficient and simpler transfers of controlled goods. Over 60 percent of Australian defence imports originating in the US, and extensive existing

bilateral cooperation, the Treaty complements pre-existing processes and offers mutual benefit to further strengthen this relationship.

Participation in the Treaty is voluntary, and the Treaty provisions only apply to organisations and individuals who have been approved for membership. Australian Community membership is only available to Australian registered entities and individuals who have attained a DISP membership at the levels described within section 2.2.1.

### **1.3. The membership, scope and authority of the treaty**

The domestic legislative authority for the Treaty is provided by the *Defence Trade Controls Act 2012* (the Act) and the accompanying Defence Trade Controls Regulation 2013 (the Regulation).

Together, the Act and Regulation strengthen Australia's export control laws and provide the legislative framework to implement the Treaty in Australia. The Act and the Regulation are available on the [Defence website](#).<sup>1</sup>

#### **1.3.1. ITAR Exemption**

The Treaty is enabled by an exemption as described in the ITAR (ITAR 126.16). Under prescribed conditions, Treaty Approved Community Members can transfer articles and technology without the need for the usual ITAR licensing or agreement requirements. Notwithstanding the opportunities the exemption allows, it does not meet the requirements of all members and therefore should be carefully considered for application in every circumstance.

#### **1.3.2. The Approved Community**

The Treaty facilitates the formation of an Approved Community in Australia and the US to enable members to transfer Treaty Articles without the need for separate export licenses. The Australian Community is managed by the International Export Controls (IEC) team within the Australian Department of Defence. The US Community is managed by the US Department of State. For information on membership to the US Community, see the United States Department of State, Directorate of Defense Trade Controls (DDTC) website<sup>2</sup>.

#### **1.3.3. Scope of the Treaty**

The scope of the Treaty is determined by three elements:

- 1. Membership** - Any company seeking to transfer articles under the Treaty must be approved as a member of the Australian Community. Treaty Articles are only permitted to be transferred between members of the Approved Community unless separate approval under existing export controls is obtained from the relevant governments.
- 2. Eligible articles** - Articles eligible for export or transfer under the Treaty must be listed in Part 1 of the Defense Trade Cooperation Munitions List (DTCML). Part 2 of the DTCML identifies those articles excluded from transfer under the Treaty and forms the Exempted

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<sup>1</sup> <https://www.defence.gov.au/ustradetreaty/>

<sup>2</sup> [https://www.pmddtc.state.gov/ddtc\\_public](https://www.pmddtc.state.gov/ddtc_public).

Technologies List (ETL). The ETL is subject to joint determination by both the Australian and the United States Governments.

- 3. Approved activities** - Four scope lists define the Australian Government and US Government activities under which the transfer of Treaty Articles is permissible. Companies should check whether their current or expected business supports any of the activities covered below.
- ***Combined Operations and Exercises List:*** lists eligible military and counter-terrorism operations and exercises that include participation of both Australia and the US.
  - ***Cooperative Programs List:*** lists eligible research, development, production and support programs related to security and defence that involve Australian and US cooperation.
  - ***Australian Government End-Use List:*** lists projects related to security or defence where the Australian Government is the end-user.
  - ***US Government End-Use:*** projects related to security or defence where the US Government is the end-user. Due to the potentially large number of projects a list will not be published. Instead, Treaty eligibility will be identified on the project or tender documentation. Refer to the US Department of State for queries on this list.

The Combined Operations and Exercises List, Cooperative Programs List and the Australian Government End-Use List are available at the Resources section of the Australian Department of Defence website.<sup>3</sup> Community Members are advised to check these lists regularly as they are subject to change.

### 1.3.4. Governance

The Treaty is managed bilaterally through the Australia-US Defence Trade Working Group (DTWG), which subsumed the functions of the Australia-US Treaty Working Group in 2019. The DTWG is comprised of representatives from the Australian Department of Defence and the US Departments of State, Commerce and Defense. The DTWG responsibilities with respect to the Treaty include:

- provide advice on any matters affecting the operation of the Treaty;
- review and provide clear and relevant guidance on the operation of the Treaty;
- review and forward any change proposals to the implementing arrangement; and
- provide reports on Treaty activities as required.

In Australia, the IEC area within the Australian Department of Defence is responsible for managing the Australian Community and day-to-day communications with US counterparts.

For further information on Management refer to section 12 of the Implementing Arrangement.

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<sup>3</sup> <https://www.defence.gov.au/ustradetreaty/>

## 1.4. Treaty Reform

The Australian Trade Treaty team within IEC is responsible for managing the Treaty and associated administration on behalf of Australian Government (Defence) and Defence Industry. Part of this administration involves working with these parties to ensure meaningful reform is undertaken across the area to ensure best practice for current and prospective Australian Community Members.

If any Australian Community Member or Approved Intermediate Consignee believe they have identified an area of possible reform, they are encouraged to contact the Australian Treaty Team at [ustradetreaty@defence.gov.au](mailto:ustradetreaty@defence.gov.au).

### 1.4.1. Definitions

**Approved Community** means the Australian Community and United States (US) Community. Both communities include respective government agencies and non-government organisations that have been approved as members.

**Australian Community** means the Australian government and approved non-government entities.

**Approved Community Identification Number (ACID)** means the unique identifier given to each Community member. The ACID number must be used as the export permission number for all exports of Treaty Articles from facilities approved for Treaty purposes.

**Australian Government Security Vetting Agency** is the central vetting agency for the Australian Government and conducts security clearance assessments for Australian Government agencies.

**Authorised Executive** means a company executive authorised to enter the organisation into contracts or arrangements.

**Authorised Officer** means a Commonwealth employee who has been appointed pursuant to Section 40 the *Defence Trade Controls Act 2012* with legislative powers to confirm the compliance of Australian Community members with the conditions of their approval.

**Defence Export Control System (DECS)** means the Information Technology (IT) system that Defence uses to manage applications and assessments related to Treaty and Defence export licensing arrangements.

**Defence Industry Security Office (DISO)** is the managing authority for the Defence Industry Security Program.

**Defence Industry Security Program (DISP)** is a program that supports Australian businesses to understand and meet their security obligations when engaging in Defence projects, contracts and tenders. Australian Community membership requires DISP accreditation.



***Defense Trade Cooperation Munitions List (DTCML)*** means the list which identifies those defence articles eligible for transitioning into the Treaty.

***Demilitarization*** means the act of eliminating the functional capabilities and inherent military design features from the article. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, or burning.

***Employee*** for the purposes of the Treaty this means an individual who is employed by an approved entity or facility within the Australian Community, and who meets the following conditions:

- hold an Australian Government security clearance of at least BASELINE or commensurate to the technology being accessed,
- has a ‘need-to-know’ requirement; and
- does not hold third country nationality. The employee may hold dual citizenship provided one of those citizenships is Australian and the other is not from a proscribed country<sup>4</sup>.

***Exempted Technologies List (ETL)*** means the list of defence articles that are not eligible for transition to Treaty export or transfer arrangements. Part 2 of the DTCML reflects the content of the ETL.

***Export*** means, for the purposes of the Treaty only, the initial movement of defence articles or defence services from the United States Community to the Australian Community.

***Intermediate Consignee*** means an entity or person who receives, but does not have access to, defence articles, including technical data, for the sole purpose of effecting onward movement to members of the Approved Community includes freight forwarders, customs brokers or other commercial transport providers.

***International Export Controls and Treaty (IEC)*** means the team within the Australian Department of Defence responsible for managing the Australian Community.

***Re-export*** means for the purpose of the Treaty only, the movement of previously exported defence articles by a member of the Australian Community to a location outside the territory of Australia.

***Release*** of technical data means any or all of the following activities:

- visual or other inspection by a foreign person of a defence article that reveals the technical data to a foreign person;
- oral or written exchanges with foreign persons of technical data in the United States or abroad;
- the use of accessed information to cause or enable a foreign person, including yourself, to access, view, or possess unencrypted technical data; and/or
- the use of accessed information to cause technical data outside of the United States to be unencrypted.

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***Re-transfer*** means for the purpose of the Treaty only, the movement of previously exported defence articles by a member of the Australian Community from the approved community to a location, or non-community member approved business, within the Territory of Australia.

***Scrap*** means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not 'scrap'.

***Serviceable or usable property*** means property with potential for reutilization or sale "as is" or with minor repairs or alterations.

***Transfer*** means, for the purposes of the Treaty only, the movement of a previously exported defence article or defence service by a member of the Australian Community within the Australian Community, or between a member of the United States' Community and a member of the Australian Community.

***Treaty Article*** means any item, services, and related technical data, including software, in a tangible or intangible form controlled for export, re-export and retransfer by the Australian or US Governments, which has been approved and acquired under or transitioned into the Treaty for transfer to other Approved Community members. It does not include basic marketing information on function, purpose or general system description.

***Treaty Trade Officer*** means an employee of the Australian Community entity responsible for contact with Defence and other Approved Community members on Treaty matters.

## 2. How to operate under the treaty

### 2.1. Who can join the Australian Community?

Organisations that currently access, or intend to access, Treaty eligible articles in support of eligible end-uses, may apply for membership to the Australian Community. Organisations that currently access goods or technologies controlled under other US export control regimes may already be involved in eligible business activities, however are still required to join the Australian Community to take advantage of the Treaty benefits. Joining the Australian Community is a voluntary business decision as the potential benefits will apply to some companies more than others.

Entities that choose not to join the Treaty can continue to operate within existing Australian and US defence export control regulations and legislation. Admission does not affect any existing licence or business arrangements a company might have.

#### 2.1.1. Application process

##### **Government agencies**

Commonwealth and State Government agencies may be eligible to become Australian Community members provided the activities meet the criteria outlined in section 1.3.2, and have been registered (via a Defence Client Registration Number) with Defence.

##### **Non-government applicants (Industry and Research Bodies)**

The application process is a one-off requirement and is outlined below. After approval, members can transfer Treaty Articles within the Approved Community without the need to seek further export or retransfer authorisations, so long as they abide by the Treaty regulatory process.

#### 2.1.2. Application form

Non-Government applicants must complete and submit an 'Application to join Australian Community' form which is available on the Defence website. To be eligible for Australian Community membership, applicants must:

- Provide details of the applicant, including details such as DECS client registration number and previous registered trading names.
- Nominate an Authorised Executive and Trade Treaty Officer, both of whom will be responsible for Treaty membership and compliance aspects.
- Provide details of Senior Executives, including information such as birth details and citizenships.
- Nominate the facility they will use for the handling, storage or manufacture of Treaty Articles. This facility will be subject to an approval process. Approval of additional facilities can be requested once membership to the Australian Community has been approved.
- Indicate previous trading history including any convictions related to associated acts and regulations.
- Provide Foreign Ownership, Control and Influence (FOCI) assessment.

- Provide a primary reason for membership on the application form, which may include a description of how their business activities relate to any of the eligible exercises, programs or projects in the approved activities lists, or the types of Treaty eligible projects they are seeking to tender or bid for work under.
- Sign the Acknowledgement of Obligations contained in Part 6 of the form. This provides assurances that the member will abide by the standards described, and completes the form for submission.

In addition to the requirements listed in the application form, prospective members are required to supply the following:

- a copy of DISP certificate and transcript (and any updated certificates describing new or updated details);
- a copy of Security Standing Orders or equivalent;
- a floor plan of the Treaty facilities; and
- a copy of the lease agreement if the prospective member does not own the facilities.

Applicants are to ensure this additional information is provided at the time of application in order to avoid any possible delays.

In circumstances where a prospective applicant provides services in support of eligible Treaty activities at another company or government agency's facility, they may, with the facility owner's approval, nominate that facility as their facility for undertaking Treaty activities. For example, if a sub-contractor provides employees to deliver specific services at the contracting company's premises, and the contracting company's facility has already been accredited for Treaty activity purposes, then the sub-contractor could nominate the contracting company's facility as their Treaty facility.

*Note:* This arrangement would only apply if the sub-contractor expects to supply and receive Treaty Articles only at the facility, and separate to the contracting company. The Australian Community member remains responsible for the protection of the Treaty Articles.

Additional actions such as providing staff security clearance levels and status of dual nationalities (including significant ties to 126.1 Proscribed Countries) should be provided during the DISP application process.

### **Acknowledgement of Obligations**

Membership of the Australian Community carries legal obligations. This includes standards for reporting and record keeping, and requirements for the marking, handling and storage of Treaty Articles as described in section 2.2 of this document, Security Principles.

When submitting an application to join the Australian Community, the Authorised Executive is required to sign an acknowledgement (contained in section 6 of the Application Form) of the obligations associated with membership.

### **Authorised Executive and Treaty Trade Officer**

Applicants are required to nominate an Authorised Executive and Treaty Trade Officer from within their organisation. The Authorised Executive must be an individual empowered to enter into legally binding arrangements on behalf of the company. The Treaty Trade Officer is a point of contact for Defence in relation to a company's activities under the Treaty, including facilitating site inspections when required. Formal notices are addressed to both the Authorised Executive and Treaty Trade Officer.

### **Senior Executives**

All persons that hold senior executive positions associated with the applicant (e.g. Board of Directors, or similar governing body, officers, executive personnel, general partners or trustees) must be identified by their full name (given, middle and surname), date of birth, place of birth and citizenship details. These details are required for the Foreign Ownership, Control & Influence (FOCI) assessment. The FOCI check is undertaken as part of the DISP accreditation process, however a FOCI yes/no questionnaire is required to be completed as part of the application process.

## **2.1.3. Assessment process**

### **Non-government applicants**

Defence will assess applications to join the Australian Community against the following criteria:

- the organisation's export compliance history under Australian and US export controls;
- whether the approval of the organisation would prejudice the security, defence or international relations of Australia;
- whether the organisation can demonstrate existing or future involvement in Treaty-eligible activities (against the DTCML and approved activity lists referenced above);
- the extent of foreign ownership, control or influence over an organisation;
- whether the organisation can demonstrate the necessary clearance levels and eligibility of staff requiring access to Treaty articles; and,
- whether the organisation has, or has access to, a facility capable of protecting Treaty Articles.

All Australian Community applications are assessed by IEC. If, after assessment, the Australian Government supports the application, applicant details are provided to the US Government for their agreement.

### **Text Box 1: Application process**

#### **Step 1.**

The applicant must apply for or confirm existence of a Defence Client Registration Number (DCRN). Most Defence industry organisations will already have a DCRN. If not, a DCRN can be applied for through the Defence Export Controls website (<https://www.defence.gov.au/business-industry/export/controls>), at the Register as a Defence Client page, link provided in the resources section of this document. You can expect to receive your DCRN within five (5) business days.

*Note* - The DCRN is only to be used for submitting applications to Defence; and has no relationship to an ACID number.

#### **Step 2.**

In order to join the Australian Community to use the treaty you must be accredited entity under **Defence Industry Security Program (DISP)**. If you are already accredited and wish to join the Australian community you will be asked to submit all of the following:

- the *Application to Join the Australian Community*  
<https://defence.gov.au/ustradetreaty/AustralianCommunity.asp>;
- a copy of your DISP certificate and transcript (and any updated certificates describing new or updated details);
- a copy of your Security Standing Orders or equivalent;
- a floor plan of the Treaty facilities;
- a copy of the lease agreement if the company does not own the facilities;

If you are **not currently an accredited entity under the DISP** and you intend to use the Treaty for any of the following:

- to work on sensitive or classified information or assets;
- the storage or transport of Defence weapons or explosives ordnance;
- provide security services for Defence; or
- as a business requirement of your current or future Defence contract, you must seek to become an accredited entity under DISP. The DISP accreditation process can be accessed via the following website link <https://www.defence.gov.au/dsvs/industry/default.asp>.

Once you have your DISP accreditation you can then complete and submit the following documents to IEC.

#### **Step 3.**

The application undergoes a review and assessment within Defence ensure compliance with and suitability of the Treaty requirements and intended scope.

#### **Step 4.**

The application is then forwarded to the US Government for bilateral agreement.

#### **Step 5.**

The applicant is advised in writing of the outcome by IEC.

## **2.2. Security Principles.**

The security requirements for working within the Treaty are contained in Article 11 of the Treaty. Below are some specific details relating to security not covered within the legislation, but implemented in consultation with the US Government.

### **2.2.1. Recognition of current security accreditations**

#### **Physical Security**

Where an organisation already holds a valid physical security accreditation for a facility under the DISP program, that same facility may meet the physical security requirements under the Treaty. The organisation will be required to hold a level 1 accreditation for physical security. Where the facility does not meet the requirements for the physical storage of Treaty articles, the entity will be required to apply to the DISP in order to obtain relevant accreditation in line with Treaty requirements. For Physical Security requirements, please contact the Australian Government Defence Industry Security Office (DISO), the managers of the DISP.<sup>5</sup>

#### **Information and Cyber Security**

Australian Community members must hold valid and appropriate Defence Information and Cyber Security accreditation issued by the Chief Information Officer Group (CIOG) within Defence, as described in the Defence Industry Security Program (DISP, Entry Level). While the DISP membership application and the Defence CIOG Information and Cyber Security accreditation process has no additional cost to business, it can take a considerable length of time to complete. Following the receipt of DISP membership, Defence may assign a CIOG consultant to provide the necessary Information and Cyber Security level accreditation.

#### **Personnel Security**

Australian Government security clearances are recognised for Treaty purposes, provided they meet the minimum requirement of BASELINE (DISP Level 1) or where required hold the security clearance commensurate to the controlled technology. Personnel security clearances are approved by the Australian Government Security Vetting Agency (AGSVA).

The Treaty Member is also to ensure that any staff member identified through additional security checks linking them to significant ties to ITAR 126.1 proscribed nationals. Should the member wish such a staff member to have access, they are to advise the IEC Treaty Team of this intention and provide justification to present to both Australian and US authorities.

#### **Governance**

Australian Community members must hold a minimum Level 1 of security governance in accordance with DISP. This level is required to match the highest DISP level of their membership, in this case the level necessitated by the DISP Level 1 physical security requirement.

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<sup>5</sup> <https://www.defence.gov.au/security>

### **2.2.2. Additional security requirements**

The security requirements under Treaty arrangements are the minimum required to ensure the protection of unclassified Treaty Articles. There may be situations where an Australian Community member could be required to implement a higher level of security than required under the Treaty, for example, if handling classified Treaty Articles. Treaty Articles need to be stored in accordance with their classification and section 10 of the Implementing Arrangement.

#### **Unclassified or Classified Official Government Information**

Similar to non-Treaty activities, if an organisation needs to store or handle official government information in their facilities, specific advice must be obtained from the Defence Security Vetting Service.

#### **Other requirements**

Further conditions may be imposed on Australian Community members based on the assessments made by the Australian Department of Defence. Defence will endeavour to work with the applicant to improve security standards in order to facilitate approval.

### **2.2.3. Personnel security requirements**

All Australian Community member employees requiring access to Treaty Articles must hold a minimum Australian Government BASELINE (which is equivalent to DISP Level 1) security clearance and be checked for indicators of significant ties (to foreign countries). These significant ties will be determined by AGSVA, but includes connections to countries proscribed under the ITAR 126.1. Should a link be identified to a proscribed country, checks will be conducted on the individual equivalent to an NV1 security clearance.

Where Treaty Articles are classified above PROTECTED, all employees requiring access to those articles must hold a commensurate security clearance.

No nationals of third countries who are not also Australian citizens will be permitted access to Defence Articles pursuant to the Treaty without the prior authorisation of both the Government of Australia and the United States Government.

Australian Community members querying existing clearances or requiring new or upgraded clearances for their employees for the purpose of the Treaty should contact the AGSVA on 1800 640 450 or email [securityclearances@defence.gov.au](mailto:securityclearances@defence.gov.au). All costs payable to AGSVA for the purpose of obtaining a security clearance will be borne by the Australian Community member. Defence does not fund Australian Community member personnel to obtain required clearances. Details and possible exceptions regarding AGSVA charges for Defence Industry vetting services are located at the following website [www.defence.gov.au/security/clearances](http://www.defence.gov.au/security/clearances).



### **Managing security clearances**

An AGSVA security clearance requires continued safeguarding by both the individual and Australian Community member. These responsibilities will be communicated to the clearance holder issue and further detail can be found at [www.defence.gov.au/security/clearances](http://www.defence.gov.au/security/clearances).

The Australian Community member's security point of contact must maintain a record of security clearances held by all personnel within their area of responsibility. Any security concerns, including attempts by external parties to cultivate Australian Community member's personnel or acquire Treaty Articles and associated information without authorisation are to be reported to the DSVS at [security.incidentcentre@defence.gov.au](mailto:security.incidentcentre@defence.gov.au).

### **Contact reporting**

Australian Community personnel as clearance holders are required to report contacts of security concern to the Defence Security Incident Centre at [security.incidentcentre@defence.gov.au](mailto:security.incidentcentre@defence.gov.au).

### **Security training and incident reporting**

Australian Community members are to ensure that their employees maintain security training and awareness requirements, including an understanding of incident reporting processes.

## **2.2.4. Citizenship requirements**

Australian Community member employees who require access to Treaty Articles must be Australian citizens.

This requirement may be waived with the agreement of both the Australian and US Governments. A waiver is only granted in exceptional circumstances. For example, a waiver may be granted when an activity requires specialised skills or expertise which the subject possesses and no, or limited, Australian citizens possess similar capability and the employee does not hold dual or third party nationality of a proscribed country listed in ITAR 126.1.

No nationals of third countries, who are not also Australian citizens, will be permitted access to Defence Articles pursuant to the Treaty without the prior authorisation of both the Government of Australia and the United States Government.

A request for a citizenship waiver should be submitted to Defence prior to seeking a personnel security clearance. Should this requirement arise, contact IEC in the first instance. AGSVA will review the request and coordinate for a citizenship waiver to seek an Australian Government personnel security clearance and then liaise with the US to seek approval. Applicants who wish to seek a citizenship waiver should contact IEC Treaty Team for process details.

### **Foreign Government security clearance recognition**

Personnel who are citizens of the United States, United Kingdom, Canada, or New Zealand, and who hold a current and valid personnel security clearance issued by the Governments of these countries, can apply to Defence to have recognition of their clearance accepted.

An eligibility waiver (for APS or contract staff) would still be required to be approved (by appropriate Defence personnel) before submission to AGSVA for overall approval.

### **2.2.5. Security awareness and training**

Security awareness and training programs promote and support effective protective security, and participation results in strengthening the security culture of members of the Australian Community.

Australian Community members, as DISP and/or clearance holders, are encouraged to develop and implement a security awareness program. DSVS can provide a core element of this program that members could supplement with awareness of local security instructions and procedures.

Use of the Defence eLearning courses for security and other discipline training is encouraged for those with DPN access. This is often a mandatory requirement for 'above the line' Defence work, and can be accessed by requisite staff with such access.

Australian Community members are required to maintain a record of all Australian Community personnel participating in security awareness and training programs.

### **2.2.6. Security incidents and reporting**

Non-government members should immediately report all actual or attempted thefts involving Treaty Articles to their company security point of contact, State or Territory police and Defence. The Defence point of contact is [ustradetreaty@defence.gov.au](mailto:ustradetreaty@defence.gov.au).

Non-government members of the Australian Community are to report all known or suspected security incidents that may affect their physical security accreditation to the Defence Security Incident Centre ([security.incidentcentre@defence.gov.au](mailto:security.incidentcentre@defence.gov.au)). The SIC will assess all security incident reports and determine if an investigation is required.

Procedures for the reporting of security incidents should be contained in the facility's security documentation, and/or their mandated export control processes typically described within a Technology Control Plan (TCP).

US Defence Articles generate a significant amount of actions when considering their loss, theft or destruction. The approved holder of the item is to notify the IEC Treaty team within 48 hours of identifying the loss, theft or destruction (to enable the IEC Treaty team to notify the US). A full description of the item is to be included, including such aspects as security classification, in addition to information regarding the associated risks and circumstances of the loss, theft or destruction.

### **2.2.7. Treaty security investigations**

#### **Non-government Australian Community members:**

In the event of a known or suspected security-related incident involving a non-government Australian Community member, the Regulatory Compliance team within Defence Export Controls may be delegated by the Defence Security Incident team to conduct a security investigation.

The Australian Community member and personnel are required to cooperate with authorities in the course of an investigation into any known or suspected security incidents. Recommendations will be made as an outcome of investigations to minimise the chance that the incident reoccurs. The Australian Community member must attempt to implement any recommendations within three months and advise the investigation officer accordingly. Should the incident be considered more significant, a longer implementation time is likely to be involved, pending advice and review of the initial assessment.

If recommendations cannot be implemented within the designated timeframe, the Australian Community member's Authorised Executive is required to:

- notify DSVS in writing;
- negotiate an alternative timeframe with DSVS; and
- implement all recommendations within the agreed alternative timeframe.

Defence Security will conduct reviews as necessary of security incident reports involving Treaty Articles and report these findings to the Regulatory Affairs and Compliance (RAC) section within Defence Export Controls.

### **Government Agencies:**

Government members of the Australian Community are responsible for conducting agency security investigations and reporting the outcomes to Defence.

### **2.3. Approval or refusal of an application**

If an application is approved, the applicant will receive a notice advising them along with details of their ACID number. A list of Australian Community members is published on the Defence website.

If an Australian Community application is refused based on adverse findings from Commonwealth or United States agencies, the applicant will receive a notice which includes the reason/s for denial. Denial of Australian Community membership can include evidence of convictions under the Customs Act 1901, the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995, the Arms Export Controls Act of the United States of America, or any related regulations under those Acts. Any applicant who is refused Australian Community membership may seek to have the decision reviewed. See section 2.3.2 Rights of Review.

Australian Community membership may be suspended or revoked where Defence reasonably believes an Australian Community member:

- has contravened a provision of the Defence Trade Controls Act 2012;
- has breached a condition of Australian Community approval;
- where holding Australian Community member approval prejudices the security, defence or international relations of Australia;
- provided false or misleading information in their application; or
- circumstances are reassessed and found to be adverse to holding Australian Community membership.

#### **2.3.1. Approval conditions**

In general, the following criteria will be considered for any nongovernmental Australian Community entities when applying for Community membership:

- That the entity or facility must be on the Government of Australia's list of approved facilities for handling of classified information and material;
- Foreign ownership, control or influence;
- Previous convictions or current indictment for violations of United States or Australian export control laws or regulations;
- The United States export licensing history of the entity or facility; and
- National security risks, including interactions with countries identified or proscribed by Australian or United States laws or regulations.

An Australian Community member must continue to comply with all conditions throughout their membership in addition to Australian and US export control legislation. In rare circumstances Defence may include additional conditions for Australian Community members. The standard conditions of membership are listed in the annex to the notice of approval.

#### **2.3.2. Rights of review**

An applicant who has had their application to join the Australian Community refused, and is dissatisfied with that decision, may request to have the decision reviewed by the Minister for Defence. A request for review of a decision must be made in writing and provided to IEC Treaty

Team within 30 days after the applicant was advised of the decision. The request for review must set out the reasons why the applicant is dissatisfied with the decision.

The Minister is required to review the decision personally, and as soon as practicable after it is received. The Minister has the authority to affirm, vary or revoke the decision, however this must be validated in writing through the US Government. Revocation of the decision will require the Minister to make any other such decision deemed appropriate. Notification of this decision must be provided within 30 days, with a description of the reasons for their decision clearly communicated.

If an applicant is still dissatisfied with a decision after it has been reviewed by the Minister for Defence they may apply to have the decision reviewed by the Administrative Appeals Tribunal.

## **2.4. Operating under the Treaty**

Australian Community members must ensure that all facilities and ICT systems intended for the storage, handling and manufacturing of Treaty Articles have been accredited by Defence in accordance with Security Principles Accreditation requirements (detailed at section 2.2), and that all personnel who require access to Treaty Articles meet the requirements of section 2.2.3.

### **2.4.1. General Treaty concepts**

Before a company considers use of the Treaty, they must consider the following basic operating concepts:

- The transfer of Treaty articles between approved community members (US and Australian) does not include the associated technical data and other supporting resources. For a company to receive and utilise technical data associated with a Treaty article from the US, the company must be listed on, or be a signatory to, a US Technical Assistance Agreement (TAA) or applicable US export licence;
- The re-transfer of a Treaty Article (once in Australia) must be approved under the terms and conditions described in section 2.4.5; and
- Only items listed on the DTCML that have an approved end use operation, program, or purpose, are approved as Treaty Articles.

### **2.4.2. Movement of articles**

#### **Transferring Treaty Articles**

Before transferring any Treaty Article using Treaty arrangements an Australian Community member must ensure that:

- the Treaty Articles intended for transfer are eligible under the DTCML;
- the transfer is in support of an eligible project, program, exercise or operation; and
- the Treaty Articles are being supplied from and/or transferred to members of the Australian or United States Community only, which includes intermediate consignees.

#### **Confirming Approved Community membership status**

Prior to supply, Australian Community members must confirm if the entity receiving the Treaty Article is a member of the Approved Community.

To confirm Australian Community membership - The Australian Community member should request the recipient's ACID number and if required, may seek validation from Defence by emailing [ustradetreaty@defence.gov.au](mailto:ustradetreaty@defence.gov.au).

The Australian Community member should retain a record of the confirmation.

#### **Re-Export and import**

The Australian Community member should follow all general regulatory requirements prescribed by Australian Border Force (ABF) for the export or import of controlled goods. An Australian Community member can only provide a Treaty Article to an approved Intermediate Consignee or another Approved Community member for the movement or export of the article.

Export licencing (from Australian Defence Export Controls) is not required for the export of Treaty Articles to US Community members or deployed Australian Community members, such as Defence. However, the supplying (exporting) Australian Community member must quote their ACID number as the export permission number on all documentation (such as your customs declaration) for all exports conducted under the Treaty.

It is worth noting, that US export authorisations are not required for US Community members, but in order to deliver Treaty Articles to Australia the Australian Community member must provide its ACID number which has to be quoted for US customs clearance and export permission.

### **2.4.3. Disposal / Destruction / Demilitarisation/ return to OEM**

Any change in the use of a Treaty Article previously exported, transferred, or obtained under the Treaty by any foreign person, including a member of the Australian Community, to an end-use that is not authorised by this exemption is prohibited without a license or other written approval of DDTC (see section 1.3.2).

The disposal or destruction of any Treaty Article is not an authorised end use and will therefore require the issuance of a DDTC licence prior to undertaking the disposal activity. The application to DDTC for authority to dispose of a Treaty Article should include a General Correspondence letter detailing how the disposal will be undertaken and the Australian entity performing the disposal activity. Where the Treaty Article was originally procured via the Foreign Military Sales (FMS) Program and transitioned in to the Treaty the articles must be returned to the appropriate Commonwealth System Program Office (SPO) for disposal actioning.

Some Treaty Articles require demilitarisation prior to destruction. Where Australian Community members require guidance on the demilitarisation process, they should contact their Defence point of contact in the first instance. Treaty Articles must be disposed of by destruction to the point of mutilation.

Treaty Articles may also be returned to the OEM for disposal under Treaty conditions.

The Australian Community members must maintain a record of the transition and disposal activity for auditing purposes for a period of five years unless otherwise specified by the US Department of State. Where the Treaty Article is identified as Significant Military Equipment, the Australian Department of Defence, IEC Treaty Team must be advised of the destruction and provided a copy of the destruction certificate.

Where Defence areas seek to dispose of a Treaty Article they are to contact IEC Treaty Team for advice relating to a Treaty Third Party Retransfer application submission.

### **Changing the Authorised Program of a Treaty Article**

If an Australian Community member wishes to transfer a Treaty Article in support of a different Treaty eligible end-use than that for which the article was originally exported, this must be recorded in sufficient detail to allow Defence to track the article's movement as required to ensure compliance. This record will differ depending on the item(s) however at a minimum the record must include sufficient detail to identify the specific item(s); where, when and to whom they are being transferred; and the reason/ end use. This may occur in a range of circumstances, for example, when a Treaty eligible project has concluded but the Treaty Articles can be used in support of a different Treaty eligible project.

#### **2.4.4. Transitioning articles into the Treaty**

Defence articles that have been supplied under a licence arrangement will need to be transitioned into the Treaty and authorised as eligible for transfer under the Treaty arrangements. Normally, Treaty Articles may be transitioned into the Treaty by the Original Equipment Manufacturer, generally a US Community member. This transition may also be authorised by the US Directorate of Defense Trade Controls (DDTC), requested via the use of a General Correspondence letter. An Australian Community member should only need to request transition of an article into the Treaty if it has been exported from the US under an ITAR licence and is currently located in Australia.

If required, Defence will coordinate with the US Government to confirm the eligibility of the article for transition. Defence will be notified by US authorities of any transition into the treaty of eligible items.

Australian Community members can apply to transition Australian Government end-use articles into the Treaty provided they meet the requirements at section 1.3.3 of this document. Application forms are available at <https://www.defence.gov.au/business-industry/export/controls/us-trade-treaty/forms>

#### **2.4.5. Transitioning articles out of the Treaty**

Australian Community members may decide to have Treaty Articles in their possession transitioned out of the Treaty. While this is technically possible Defence does not recommend this action. Moving items out of the Treaty will complicate the management of Defence articles by industry with significant risk of compliance breaches. This measure should not be seen as a mechanism for circumventing regulations and licensing protocols.

To transition an article out of the Treaty, the Australian Community member should write to the relevant Defence Project or Program who will internally liaise with IEC Treaty Team. The IEC Treaty Team will provide advice on the best plan of action and the necessary steps.

The item transitioned out of the Treaty will need to be listed on an existing or new ITAR agreement or licence. This should be organised with the US supplier in the first instance, who will work with DDTC or BIS to gain the approval to remove the item from Treaty management and list it on a new authorisation. Noting the likelihood that these transitions can take some time, it is on the requester to plan well in advance.



Australian export authorisation would also be required from the Defence Export Controls prior to the export of the articles from Australia if the item is no longer covered by the Treaty. Under these circumstances the article become subject to either the ITAR or EAR.

The transition of an article from the Treaty to another export authorisation must be recorded by the Australian Community member.

#### **2.4.6. Article transfer to a non-Australian Community sub-contractor**

Australian Community members may have reason to temporarily transfer Treaty Articles to an entity that is not a member of the Approved Community for maintenance or other services. Members are to contact IEC for guidance should they seek to do this. It should be noted that this type of re-transfer is very limited and requires additional approvals and subsequent long wait times. It is only applicable where the company is an Australian company that are not part of the Community.

An Australian Community member may seek authorisation from the US Government to transfer the articles through an ITAR 123.9(c) retransfer General Correspondence Letter. Similarly, the US supplier may act on behalf of the Australian Community member and seek retransfer approval for the article. After US approval, and whilst in the other entity's possession, the Treaty Article will be subject to normal ITAR access requirements and will only become Treaty controlled again after it is returned to the Australian Community member. This allows Australian Community members to retain business with companies that are not members of the Australian Community without requiring separate authorisations, such as a Manufacturing License Agreement or Technical Assistance Agreement. However, Australian Community members considering a General Correspondence Letter should first contact the IEC Section for guidance.

Alternatively, the Australian Community member may seek authorisation under existing access arrangements, such as Manufacturing License Agreement or Technical Assistance Agreement, and transfer the articles under their authority. Australian Community members are to be cognisant of the approval times for such changes and consider these as part of their day to day operations.

#### **2.4.7. Marking**

All Treaty Articles must be clearly marked as Treaty Articles in the manner described below and in accordance with Section 10 of the Implementing Arrangement. Marking extends to documents and technical data that contain controlled information.

A Treaty Article should be marked, by the US exporter, if it is exported under the Treaty exemption.

If an Australian Community member receives a Treaty Article that is not marked correctly, or not marked at all, they are required to correct the marking and report this to IEC, as soon as reasonably possible. In marking the article the Australian Community member should apply the US origin marking "Restricted USML//REL AUS and USA Treaty Community".

	US Origin Treaty Article	Australian Origin Treaty Article
Unclassified Articles	Restricted USML//REL AUS and USA Treaty Community	Australian unclassified USML//REL AUS and USA Treaty Community
Classified Articles	<p>“//[CLASSIFICATION] USML//REL AUS and USA Treaty Community//”;</p> <p>where “[CLASSIFICATION]” means the security classification level assigned to US Defence Article.</p>	<p>“//AUSTRALIAN [CLASSIFICATION LEVEL] USML //REL AUS and USA Treaty Community//”;</p> <p>where “[CLASSIFICATION LEVEL]” means the security classification assigned to the Article.</p>

*Table 1 - markings*

The term 'Restricted' in the marking of an unclassified controlled US origin Treaty Article is intended as a handling marker indicating that access is restricted to members of the Approved Community. It serves as a standard identifier agreed to by both US and Australian authorities. It is not a security classification.

Where the Treaty Articles are classified, Australian Community members must also meet the protective security handling requirements of the applicable classification.

Where a Defence article is transitioned into the Treaty it must be marked by the Australian Community member in accordance with section 2.4.7.

## **2.4.8. How to mark an item**

### **Tangible Defence Articles**

Treaty Articles (with the exception of technical data) shall be individually labelled with the markings described in section 2.4.7 Marking. Where labelling is impracticable, in examples such as chemicals, propellants or machined parts, documentation shall accompany the article clearly associating it with the markings.

### **Technical Data**

Technical data, regardless of media or means of transmission (oral, physical or electronic), shall be individually labelled with the appropriate identification marking. Where labelling is impracticable, in examples such as contracts or invoices, documentation or verbal notification shall accompany the article clearly associating it with the markings.

Technical data includes the following:

- data packages;
- technical papers;
- manuals;
- presentations;
- specifications;
- photographs;
- plans;
- instructions;
- reports; and
- guides.

Shipping documents, invoices, purchase orders and any other related documentation must all be marked with the Australian Community member's ACID number (i.e. DTT0123).

#### **2.4.9. When marking is not practicable**

If it is not practicable to mark a Treaty Article, perhaps because of its fragility, precision, functionality or composition, or if the Treaty Article is intangible, it must be accompanied by documentation that is marked in the manner explained within the table above. Documentation which may be marked to identify the article as a Treaty Article includes, but is not limited to, contracts, bills of lading, invoices and shipping bills.

Electronic transfers of Treaty Articles must carry the required marking within the electronic format, for example, in the subject line of an email or in the file name.

These marked documents, or copies, must be kept in accordance with the Treaty record keeping requirements. Additionally, a record of transfer should be made, to ensure general recordkeeping requirements demanded by US and Australian regulations are maintained.

#### **2.4.10. Record keeping**

Australian Community members are required to keep records of all activities conducted under the Treaty and keep those records for a minimum of five years. These records are most likely to be subject to compliance monitoring verifications as referred to in section 2.5 Compliance obligations and monitoring.

Provided that the necessary information is recorded, there is no specific record keeping system or type of record that is required. For example, email correspondence that identifies the information below may be used as a record for the purposes of a Treaty transfer, provided it is protected from tampering or amendment by

The types of activities to be recorded include all instances where Treaty Articles are supplied to Approved Community members or other recipients, or where an Australian Community member

conducts an activity related to Treaty Articles as a result of a direction issued by Defence. The types of information that need to be recorded are:

- a description of the Treaty Article(s), including serial numbers or other identifiers as practicable;
- the ACID number of the Australian Community member being worked with;
- the date, time and place from which the Treaty Articles were supplied;
- the name of the approved Intermediate Consignee or Approved Community member used to transport the Treaty Articles and the date the Treaty Articles were supplied to them;
- the name of the Approved Community member to whom the Treaty Articles were supplied (the receiver) and the date, time and place that the Treaty Articles were received;
- for electronic transfer of Treaty Articles, sufficient details to identify the transfer are required, such as a copy of the email which supplied Treaty Articles;
- the marking applied to the Treaty Articles or accompanying documentation; and
- any information deemed to be worthy based upon personal assessment.

## **2.5. Compliance Obligations and monitoring**

Defence will conduct compliance monitoring in consultation with Australian Community members. Defence monitoring coupled with industry's vigilance and self-reporting will enable Australian entities (Government and industry) to primarily prevent breaches of the Treaty, yet also facilitate remediation activity to prevent reoccurrence and establishment of a pattern of systemic mismanagement of controlled technology.

This monitoring is in order to ensure Australian Industry is protecting Treaty Articles and supporting the Government's export controls on defence technology.

Section 2.2.6 of this manual details what to do in the event of theft, loss, authorised access or other security incident.

### **2.5.1. Compliance Principles**

Defence have a range of compliance requirements inherent to the environment. This requires a constant awareness of the regulations which govern individual roles, and dictates the effort and activity devoted to each.

The US, under both the ITAR and EAR, have compliance information available via their respective websites. This information can be used as a starting point to building a company specific compliance regime. The US Regulations are considered the exemplar for compliance standards, and therefore it is considered that compliance with these will ensure compliance across all areas, including when operating under the Treaty.

The fundamental aspects of compliance according to the ITAR are as follows:

- a. Organisational structure – organisational charts and descriptions.
- b. Corporate commitment and policy – knowledge of the impact to a business or organisation.

- c. Identification/receipt and tracking of items – the importance of knowing what you have in your possession cannot be overstated, it dictates the day to day operations of a business.
- d. Re-exports and retransfers – procedures to ensure approvals and authorisations are in place.
- e. Restricted and prohibited exports and transfers – procedures to ensure screening and diversion checks.
- f. Recordkeeping – procedures to ensure the proper and effective maintenance of ITAR records for a duration of five years.
- g. Internal Monitoring – auditing and accountability.
- h. Training – across all employment groups who may be exposed to controlled technology, including HR and engineering divisions.

### 2.5.2. Risk

In general terms, risk is the possibility of something happening which is detrimental in some way. Risk involves uncertainty about the effects/implications of an activity with respect to something that humans value (such as health, well-being, wealth, property or the environment), often focusing on negative, undesirable consequences. For Australian Community Members, the implications are connected to the activity of support and effectiveness of their business to support Defence and Whole of Government in their Treaty efforts.

### 2.5.3. Internal Compliance Systems

Australian Community Members are to ensure they comply with their obligations as a Member at all times. Defence recommends the following guidance on how best to implement and maintain an effective and robust compliance approach:

- **Adopt an internal compliance policy for Treaty activities.**
  - The executive management of the Australian Community member should demonstrate commitment to comply with Treaty membership via a statement entered into a Treaty management document or similar.
- **Nominating a Treaty Trade Officer.**
  - Nominating an individual responsible for the duties of a Treaty Trade Officer is a requirement for approval as an Australian Community member.
  - The Treaty Trade Officer will be the company's point of contact with Defence on Treaty matters. They may act in the capacity of the Technology Control Officer (TCO), thus having previous experience in the management of US controlled technology.
  - The Treaty Trade Officer should have an understanding of the company's compliance and export systems, access to relevant records, and be authorized (via duty statement or similar) to correspond with Defence on behalf of the Australian Community member.
  - Frequent contact between the Treaty Trade Officer and Defence ensures the company will remain aware of any changes to legislation or policy.

- **Educate staff.**
  - Internal compliance system documentation should be current, available for staff to access, and be mandatory reading for new staff.
  - Australian Community members should provide training programs to ensure staff are familiar with Treaty trade requirements and export controls.
  - Changes made to Treaty membership conditions and export controls should be implemented within the internal system, and communicated to relevant staff.
- **Internal compliance reviews.**
  - Internal compliance systems should be routine and reviews should evaluate policies that ensure legal, regulatory, company requirements and obligations are being met. Review functions may be performed internally or by a third party.
- **Recordkeeping.**
  - The Treaty and the Act require all relevant records to be retained for five years from the date of the activity. This mirrors the recordkeeping requirements as defined by the US ITAR and Australian Defence Export Controls regulations.
  - A record keeping process should be implemented to detail the company's activities under the Treaty. The process should assign responsibilities for each stage of a Treaty activity, enhancing the overall visibility for relevant compliance personnel and senior executives.
  - The business should establish a strict policy on timeliness, maintenance and storage of records.
  - Effective record keeping processes which contribute to efficiency within the organisation will make it easier to work with Defence on Treaty matters, and lessen the risk of non-compliance.
- **Report.**
  - Australian Community members are obliged to comply with all reporting requirements, which includes providing an annual compliance report to Defence, or when specifically requested.

#### **2.5.4. Reporting**

##### **Annual compliance report**

All Australian Community members are required to submit to Defence an annual compliance report within 30 days of the end of the Australian financial year (30 June) regardless of the number of Treaty transfers that have occurred.

The report must be endorsed by the Treaty Trade Officer or Authorised Executive and should include a statement to confirm the Australian Community member's compliance with the Act, Regulation and membership conditions. Known or suspected security incidents are to be included in the Australian Community member's annual compliance report.

This report helps provide valuable information that is shared with US Authorities, and is used as a means of determining the level of use of the Treaty. This aids in identifying improvements to the process for all parties.

*Note:* A template for the annual compliance report is emailed to all Australian Community members before the end of the Australian financial year. A copy can also be found on the Treaty [website](#).

### **Reporting material changes**

Where possible, Australian Community members should report immediately to Defence any material change to the information originally supplied in their application to join the Australian Community. A material change may include: a change in the senior executives or the registered address of the company; acquisition or divestment of a subsidiary or foreign affiliate; a merger; or a take-over.

#### *FOCI changes*

Australian Community members are required to report any anticipated changes that may affect their FOCI assessment. As FOCI is a mandated procedural check of DISP membership, you are to contact DISO should you seek any advice in this area.

#### *Security changes*

Australian Community members are required to report immediately to DSVS and IEC Treaty Team any changes to their personnel, facilities or ICT systems that may affect their ability to maintain accreditation for the purposes of the Treaty.

### **2.5.5. Methods for confirming compliance**

In addition to reviewing annual reports, Defence may conduct on-site monitoring activity or request reports or information on the operation of Treaty activities and relevant business or personnel changes.

#### **Routine monitoring and engagement**

In the event of actual or suspected non-compliance being identified, the first priority for Defence is to ascertain how the incident occurred, the potential risks posed by the incident, and what, if any, measures have been taken to ensure a similar incident does not recur.

For minor violations, Defence will provide guidance to the Australian Community member on how to prevent recurrence. Defence may also undertake further measures to ensure the Australian Community member is meeting the conditions of their membership approval. For example, reporting requirements may be increased to maintain visibility over a continuing issue of concern, or internal procedures may require modification or improvement to retain membership.

For violations of a more serious nature or repeated minor violations, Defence may choose to take more direct action to safeguard Treaty Articles. The Act provides the Minister for Defence with the power to suspend or cancel an Australian Community membership in certain circumstances.

While these powers will not be used lightly, membership of the Australian Community is conditional on continued compliance with membership obligations, and if these are not met then membership may be revoked, either temporarily or permanently.



The Treaty requires Defence to report repeated or serious violations to the US Government.

In the most serious cases, Defence may refer the matter to the Australian Federal Police or Australian Border Force for further investigation.

### **2.5.6. On-site visit**

A Defence Authorised Officer may conduct on-site monitoring at any reasonable time of day to confirm that Australian Community membership obligations adhere to the Act and its Regulation.

In accordance with Section 48 of the Act Australian Community members must provide a Defence Authorised Officer access to any approved premise. Where an on-site monitoring activity is to be conducted, a minimum of 24 hours' notice will be provided to the Australian Community member prior to the visit. The details of the Authorised Officer visiting will be provided at the time of the inspection.

#### **Authorised Officers**

Authorised Officers are Defence officials that have been approved to provide monitoring powers under Part 4 of the Act.

The primary role of the Authorised Officer is to provide monitor compliance and provide advice and assistance to the Australian Community member to support their compliance with Part 3 and 6 of the Act and the conditions of their Australian Community approval notice.

An Authorised Officer will carry an identification card that identifies them as an Authorised Officer for the purposes of the Act. The Authorised Officer must show this card to the occupier of the premises being inspected, or to anyone else who is apparently representing the occupier at the time of inspection.

In regards to Treaty Articles only an Authorised Officer holds the following monitoring powers under Part 4 of the Act:

- search, inspect, examine, or conduct tests of anything on site (including electronic equipment);
- make recordings of anything on the premises;
- inspect and make copies of any documents, including electronic records, or operate electronic equipment;
- take any equipment and materials required to exercise monitoring powers onto the premises; and
- in certain circumstances, secure anything for up to 24 hours.

### **2.5.7. What are Authorised Officers looking for?**

Where necessary, Authorised Officers will undertake inspections of records and premises to assess the Australian Community member's compliance with the conditions of their Australian Community membership approval. Specifically, Authorised Officers will, for example, ensure that: records have



been kept accurately, Treaty Articles are appropriately marked, handled and stored, and access to Treaty Articles is restricted in accordance with the Act and its Regulation. Particular reference to staff access procedures and the sharing of articles and information to only approved Community members will be a primary focus.

#### **2.5.8. Reasonable assistance**

An occupier of premises entered for the reasons of an Authorised Officer visit, or another person who apparently represents the occupier, must provide the authorised officer exercising monitoring powers, and any person assisting the authorised officer, with all reasonable facilities and assistance for the effective exercise of their powers.

#### **2.5.9. Persons assisting Authorised Officers**

In certain circumstances an Authorised Officer may require the assistance of another person to undertake their duties. A person assisting the Authorised Officer may enter the premises and exercise monitoring powers in relation to the premises under the direction of the Authorised Officer. Any power exercised by a person acting under the direction of an Authorised Officer is taken to have been exercised by the Authorised Officer.

Persons assisting an Authorised Officer may include other Defence employees, Customs officers, and other Australian or US Government officials.

#### **2.5.10. Requests for information**

##### **What may be sought?**

Under Section 43 of the Act, Defence has been granted the power for Authorised Officers to request any relevant information from Australian Community members in relation to their activities under the Treaty. Defence may use this power to confirm data accuracy within reporting material provided to Defence or to obtain information regarding suspected non-compliance.

Examples of the information or records an Australian Community member may be requested to provide are:

- information regarding companies with whom the Australian Community member does business;
- an inventory of Treaty Articles in the Australian Community member's possession;
- Treaty Article import and export history; and
- evidence of access controls.

#### **2.5.11. Suspension**

Provisions within the Act provide the Minister for Defence the power to direct Defence to suspend an Australian Community member for a specified time if the Australian Community member:

- has contravened a provision of the Act;
- has breached a condition of the approval;
- holding the approval prejudices the security, defence or international relations of Australia;

- provided information in their application for membership to the Australian Community that was false or misleading; or
- circumstances change from those which existed at the time of approval.

If the Australian or US Government considers it essential to remove a nongovernmental entity from the Approved Community due to national security concerns, the following process will be followed:

- a) It will advise the other government, providing as much information as possible, and that government will have 24 hours to provide mitigating information concerning the entity or facility.
- b) At the end of 24 hours, unless decided otherwise, the will formally notify the other Government of its desire that the entity or facility be removed from the Australian Community list. Upon such notification, the entity or facility will be suspended, requiring it to operate under United States and Australian export licenses and not under the Treaty pending a final decision on removal from the Australian Community.
- c) The Governments will consult within 30 calendar days of notification regarding removal of an entity or facility. Consultation may include measures to be applied during the suspension period and any remedial measures to be imposed in lieu of removal.
- d) If after such consultation either Government believes that such entity or facility should be removed from the Australian Community list, it will be removed. Otherwise any suspension will be rescinded, although such rescission may be conditional upon compliance with remedial measures.

### **What to do if suspended?**

In accordance with the Act, Defence will provide an Australian Community member with a notice of suspension. The notice will come into force at the time the Australian Community member receives such and will request the recipient to take a specified action, or not to take a specified action, in relation to the Treaty Articles in their possession at the time of suspension.

### **Can Treaty activities continue if suspended?**

While an Australian Community member is under suspension, they are not permitted to undertake any activities under the Treaty. The suspension notice will identify a suspension timeframe of not more than 60 calendar days or any conditions required to be met before the Australian Community member can seek to have the suspension lifted. The suspension can only be lifted when all conditions that enacted the suspension have been met.

### **2.5.12. Cancellation**

In circumstances of serious or repeated non-compliance, the Minister for Defence may decide to cancel the Australian Community member's membership. Reasons for cancellation mirror those defined for suspension. For a cancellation to take effect, Defence will issue the Australian Community member a notice of cancellation. The notice comes into force at the time the Australian Community member receives the notice. The notice will direct the Australian Community member to

comply with specific directions, relating to the Treaty Articles in their possession at the time of cancellation.

### **What happens if an Australian Community membership is cancelled?**

Cancellation of Australian Community membership will remove permission to undertake any activity under the Treaty, including the handling, storage, manufacture or supply of Treaty Articles. Former Australian Community members need to ensure that they continue to meet handling and storage requirements for Treaty Articles until other authorisations for the possession and/or supply of the articles are in place.

If the goods are to be returned to the US, an Australian export permit will need to be in place prior to export.

## **2.6. Leaving the Australian Community**

Organisations wishing to withdraw their Australian Community membership should notify the IEC Treaty Team of their intention. Members will need to obtain licences or other authorisations for all Treaty Articles in their possession before their removal from the Australian Community can be finalised.

Australian Community members who no longer require access to Treaty Articles in their possession may seek to return the articles to the supplying Approved Community member or transfer them to another Approved Community member before they leave the Australian Community.

Once removal from the Australian Community has been confirmed, the organisation will no longer be an Australian Community member, and will not be able to conduct activities under the terms of the Treaty. Any ACID numbers registered to that organisation will be cancelled.

### **2.6.1. Gaining US authorisations**

Organisations that have left the Australian Community, or had their membership cancelled, will need to apply to the DDTC through their US supplier for relevant US export or retransfer authorisations should they require continued access to US defence articles.

Please contact IEC for further advice and assistance if required.

### **2.6.2. Maintaining controls on items**

Until other valid licences or authorisations are obtained to replace Australian Community membership obligations, organisations formerly registered under the Australian Community are required to maintain Treaty-equivalent access control on all Treaty Articles until other arrangements are made. Ideally the company returns Treaty article prior to leaving Australian Community.

### **2.6.3. Retention of Treaty records**

Any organisation that was formerly registered as an Australian Community member is required to retain records of all Treaty activities for a minimum of five (5) years after the date of the Treaty activity.

### **2.6.4. Closure of the Australian Community business entity**

IEC Treaty Team must be notified as soon as possible of the planned closure of an Australian Community business entity and what arrangements are being made for the transfer of any Treaty Articles and records in the possession of the business entity.

## **2.7. Seizure and condemned articles**

If an Australian Community member supplies, or attempts to supply, any Treaty Article in contravention of the Act, the article and anything in which it is contained, is forfeited to the Commonwealth and the matter may be taken to Court for resolution.

Where a Treaty Article is forfeited to the Commonwealth, Defence may refer the matter to the Australian Federal Police, a member of a State or Territory police force, or a Customs officer, to seize the article.

Treaty Articles involved in a contravention of the Act may be condemned and subject to approval from DDTC subsequently, destroyed in accordance with Defence directions. Condemned articles may also be eligible for sale, pending their use for a lawful purpose (IAW DTC Regulation 2013 Para 31).

## **2.8. Intermediate Consignees**

### **Eligibility to be an Intermediate Consignee**

An Intermediate Consignee is any entity or person who receives, but does not have access to, Treaty Articles, including technical data, for the sole purpose of movement between members of the Approved Community.

Unclassified Exports of Treaty Articles must only be handled by Australian Intermediate consignees who are:

- Intermediate Consignee members of the Australian community; or
- Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other Australian parties that are identified at the time of export as being on the list of Authorised Australian Intermediate Consignees.

Unclassified Exports of Treaty Articles must only be handled by United States intermediate consignees who are:

- Exporters registered with the Directorate of Defense Trade Controls and eligible;
- Licenced custom brokers who meet the conditions at ITAR §126.18(k)(1)(i); or
- Commercial air freight and surface shipments carriers, freight forwarders, or other parties who meet the conditions at ITAR §126.18(k)(1)(i).

To be eligible, the primary business of the applicant must be as an intermediate consignee, and they must have a tracking system able to identify the location of a Treaty Article in their possession and to record delivery details (see Tracking System paragraph below).

An Intermediate Consignee's only activity involving Treaty Articles is the facilitation of movement between Approved Community members and are not subject to Authorised Officer visits, unless there is an identified concern by Australian or US authorities relating to the handling of items in their possession.

### **2.8.1. Application process to be an Intermediate Consignee**

To become approved, applicants should submit an 'Application to become an Approved Intermediate Consignee' form available on the Defence website.<sup>6</sup>

#### **Business Requirements**

The primary business of an applicant must be as a freight forwarder, customs broker or other commercial transport service provider. IEC will assess an applicant's suitability based on information provided in the application.

#### **Tracking System**

An Intermediate Consignee applicant must be capable of tracking the movement of Treaty Articles in their possession, including the ability to:

- identify the location of an article in their possession;
- record the date and the time the article is received;
- record the date and the time the person delivers the article;
- identify the person to whom the article is delivered; and
- record the place at which the article is delivered.

The specific requirements are detailed in Section 20 of the Defence Trade Controls Regulation 2013.

#### **Approval Conditions**

Approval as an Intermediate Consignee may be subject to certain conditions. All conditions of approval will be included on the Notice of Approval.

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<sup>6</sup> <https://www.defence.gov.au/ustradetreaty/intermediateconsignees.asp>

## 3. Australian Community member resources

### 3.1. Feedback and comments

Defence is committed to providing the best possible support for the Australian Community and strongly encourages your feedback to ensure the Treaty's success. If you have any comments on this manual, the website, telephone or email support services, or if you have any comments or queries on any aspect of the Treaty or Australian Community membership, please contact IEC using the contact details found at the Defence Export controls / US Trade Treaty website.

### 3.2. Useful links and resources

<u>Item</u>	<u>Link</u>
Email of IEC	<a href="mailto:iec@defence.gov.au">iec@defence.gov.au</a>
Email of Trade Treaty team	<a href="mailto:ustradetreaty@defence.gov.au">ustradetreaty@defence.gov.au</a>
The Australian Department of Defence Treaty website	<a href="https://www.defence.gov.au/business-industry/export/controls/us-trade-treaty">https://www.defence.gov.au/business-industry/export/controls/us-trade-treaty</a>
Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation and Treaty Implementing Arrangement.	<a href="http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2013/17.html">http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2013/17.html</a>
US Department of State Trade Treaty website	<a href="https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&amp;sys_id=2d21e8b3dbb8d300d0a370131f96190b">https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&amp;sys_id=2d21e8b3dbb8d300d0a370131f96190b</a>
126.16 of the International Traffic in Arms Regulations	<a href="https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&amp;SID=70e390c181ea17f847fa696c47e3140a&amp;mc=true&amp;r=PART&amp;n=pt22.1.126">https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&amp;SID=70e390c181ea17f847fa696c47e3140a&amp;mc=true&amp;r=PART&amp;n=pt22.1.126</a>
Resources and Guidance for Australian industry and Government including: <ul style="list-style-type: none"> <li>• Treaty application forms</li> <li>• Treaty end-use (scope) lists</li> <li>• Australian Community member list</li> <li>• Approved Intermediate Consignee list</li> <li>• Compliance Policy</li> <li>• Australian Legislation</li> <li>• <i>Defence Trade Controls Act 2012</i></li> <li>• <i>Defence Trade Controls Regulation 2013</i></li> <li>• Defense Trade Cooperation Munitions List</li> <li>• US Legislation</li> <li>• General Treaty information</li> </ul>	<a href="https://www.defence.gov.au/business-industry/export/controls/us-trade-treaty/resources">https://www.defence.gov.au/business-industry/export/controls/us-trade-treaty/resources</a>
Defence Client Registration Number Application	<a href="https://portal.exportcontrolsforms.defence.gov.au/user-reg/">https://portal.exportcontrolsforms.defence.gov.au/user-reg/</a>