Australian Government

Independent Review of the Defence Trade Controls Act 2012

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Letter of transmittal

The Hon Richard Marles MP
Deputy Prime Minister and Minister for Defence
Parliament House
CANBERRA ACT 2600

15 December 2023

Dear Deputy Prime Minister

We are pleased to provide the final report of the independent review of the *Defence Trade Controls Act 2012* (the DTC Act). The review addresses its Terms of Reference and makes ten recommendations to improve the DTC Act. We received 61 written submissions and held six round tables across Australia with representatives from government, industry, universities, and peak bodies. We acknowledge with thanks their constructive engagement and input.

Our dialogues were marked by broad stakeholder recognition that Australia's strategic circumstances had changed significantly since Dr Vivienne Thom AM undertook the first DTC Act review in 2018 and that a 'business as usual' approach was not fit for purpose.

Australia's export control framework must meet the demands of a dynamic geostrategic environment, which presents both rapidly evolving threats, as well as rich opportunities like those afforded by AUKUS. While preserving the international scientific collaboration which is fundamental to Australia's research community, economic growth, and enhancement of the Australian Defence Force's capabilities, we also must satisfy the heightened expectations and obligations associated with AUKUS transfers of the most sophisticated technologies and services that will provide the military capability edge necessary to meet the ambitions of the 2023 Defence Strategic Review.

In conducting our review, we have been cognisant of the parallel work of other government agencies to strengthen their own roles in meeting these objectives. We also have considered the proposed changes to the Act in the Defence Trade Controls Amendment Bill 2023. We see close alignment between these and our own recommendations.

We thank the dedicated and committed staff of the Defence Export Controls Branch for their assistance with the conduct of the review.

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Co-lead of the DTC Act Review

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I. Executive summary

1.0 Australia's export control framework must meet the demands of a dynamic geostrategic environment, which presents both rapidly evolving threats, as well as rich opportunities like those afforded by AUKUS.

1.1 Emerging, innovative technology blurs the distinction between military and non-military applications. This tests policy-makers' ability to keep pace with the rate of change and challenges shared understanding of 'dual use' and associated risks.

1.2 Foreign powers increasingly seek advantage and capability edge at our expense, including by exploiting the academic freedom underpinning the international collaboration vital to Australia's research community and our economic growth. As the Australian Academy of Science noted in its submission:

> *"Strategic competition between nations is driving increasing recognition of the security implications of international research collaboration."*

1.3 While the export of physical goods across physical borders is well practised, we face ever more complex challenges in managing the intangible transfer of technologies and know-how across virtual borders, including within Australia.

1.4 Consequently, we must:

(i) build greater **awareness** of the DTC Act amongst its stakeholders;

(ii) deepen their **understanding** of its purpose and compliance obligations and processes, including for those who might not see themselves as engaged in "export" of "defence" items; and

(iii) inculcate a sense of **shared responsibility** for preventing damage to the national interest (i.e., encompassing not just hard security, but also broader considerations like human rights concerns and reputational impacts).

1.5 Our proposals seek to achieve these objectives by:

- introducing provisions to encompass goods, technology and related services that evolve more rapidly than the Defence and Strategic Goods List (DSGL) can capture;
- emphasising a preventive, rather than punitive, approach to compliance;
- focusing on outcomes – not legislating process – and providing tailored guidance and outreach to industry and academia through an evolving, granular list of criteria, supported by a compendium of guidelines and case studies to increase understanding of the risks associated with supply;
- building a network of accredited export control compliance advisors to enhance informed compliance by industry and academia;
- strengthening the scaled system of penalties for negligent, reckless or deliberate breaches; and
- improving Defence's efficacy as the regulator by enhancing its investigative powers and capacity, including through streamlining internal processes to concentrate effort on pro-active outreach, compliance, and enforcement.

1.6 In conducting this legislatively mandated review, we have been mindful of the parallel activity and efforts by Defence and other government agencies – driven by Australia's changing strategic environment – that bear upon the national framework of export and related controls, particularly the Universities Foreign Interference Taskforce (UFIT) Guidelines, the *Security Legislation Amendment (Critical Infrastructure Protection) Act 2022* and Australia's autonomous sanctions regime.

1.7 Numerous submissions emphasised that any re-working of the DTC Act, including giving effect to AUKUS ambitions, must dovetail tightly with these separate processes and avoid increasing the complexity and multiplicity of instruments with which business, especially small to medium

enterprises (SMEs) and academia must comply. We agree. Enhancing inter-agency co-ordination is key to monitoring implementation, avoiding regulatory over-burdening of stakeholders, and ensuring compliance.

1.8 We believe our recommendations and observations strike the right balance between meeting Australia's national security needs and other relevant policy considerations, including promoting the international observance of human rights, while preserving opportunities for trade, research, innovation, and international collaboration.

II. Introduction

1.0 Ten years since its inception, the DTC Act and attendant regulatory arrangements are largely familiar to core constituents in industry and academia. Occasional case-by-case criticism aside, our consultations and most submissions show that the Act hitherto has struck a reasonable balance between fulfilling national security requirements and supporting trade, research, and international collaboration. Processes seem to be working as intended, although improvements clearly can be made.

1.1 However, Australia's strategic environment has deteriorated in the five years since the DTC Act was first reviewed, as the Defence Strategic Review 2023 highlighted. And, despite the apparent lack of serious, deliberate breaches of the DTC Act to date, the lure of potential gain from exploiting any weaknesses in controls likely will increase as AUKUS collaboration deepens.

1.2 An enduring risk lies in uneven understanding of rapidly evolving threats to the broader national interest and in the reportedly still prevalent ignorance of the DTC Act, particularly amongst SMEs. The nomenclature of "defence" and "export" fuels a misperception about the DTC Act's broader relevance and applicability, especially for resource-constrained SMEs that struggle to navigate the complex network of national controls in which multiple agencies have intersecting roles and authorities.

1.3 That network is under growing pressure to anticipate and respond to shifting threats arising both from rapidly emerging technologies and, increasingly, from the means of supply. Controlling intangible and onshore supply is a recognised gap in existing legislation and an obvious focus for remedial action, as Dr Vivienne Thom AM proposed in her 2018 review. Several parallel activities (e.g., the review of the *Defence Act 1903* and, the Defence Trade Controls Amendment Bill 2023, and the Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023 into Parliament are focused on these issues.

1.4 Ultimately, government is accountable to foreign partners and allies for the faithful implementation of export control measures agreed in the four main multilateral export control regimes (see **Appendix E**). The DSGL, which specifies the goods, software and technologies that are regulated under Australian export control legislation will remain the primary focus of Australia's regulatory system. However, as many submissions noted, rapidly evolving technology inevitably means that the DSGL will not keep pace with emerging threats, and gaps in export control measures will arise, albeit temporarily.

1.5 Accordingly, the essence of the review and our recommendations is:

- to inculcate a shared sense of responsibility for preventing damage to "the national interest" (i.e., encompassing not just hard security, but broader considerations, including human rights concerns and reputational impacts); and
- to encourage stakeholders to embrace the overarching philosophy that the supply of military and dual-use goods, technology, or related services to a foreign entity or individual, regardless of location, will require scrutiny under the DTC Act.

III. Key issues and recommendations

1. Maintaining relevance: capturing non-DSGL goods, technology and related services

1.0 If amended as proposed by the Defence Trade Controls Amendment Bill 2023 (DTC Amendment Bill), the DTC Act will provide a strengthened regulatory framework for goods and technology specified in the DSGL, as well as related services (described in the current DTC Act and the DTC Amendment Bill respectively as DSGL goods, DSGL technology and DSGL services).

1.1 Although the DSGL will remain the nucleus of Australia's export controls framework, formal updating of the list will always lag behind technological developments and be vulnerable to politically motivated disruption of the consensus decision-making which is at the core of the international system. Hence, legislative provisions as reflected in Australia in the DSGL should be expanded to encompass goods and technologies that evolve more rapidly than the multilateral export control regimes can capture.

1.2 Our regulatory approach must be nimble and adaptive, allowing Australia to move swiftly, in concert with like-minded countries, to enact national measures as required and to provide constituents with continual updates about goods and technology of emerging concern.

1.3 Accordingly, we recommend that modest, adjustments be made to the DTC Amendment Bill to draw non-DSGL goods, technology, and related services within the prohibited supply coverage of the DTC Act. This would give effect to the over-arching philosophy that compliance with the DTC Act is required if:

(a) either directly or through an intermediary, a person is supplying certain goods, technology, or related-services

- to a foreign entity or individual,
- either physically or via electronic or other means,
- either in or from Australia, or overseas; and

(b) the customer or intended end user is a foreign military entity or individual linked to a foreign military; and

(c) the goods, technology, or related services are specified in the DSGL (i.e., "DSGL goods", "DSGL technology" or "DSGL services"); or

(d) the goods, technology, or related services are not DSGL controlled, but have the potential to enhance the military capabilities of another country or otherwise to prejudice Australia's national interest (i.e., "non-DSGL goods", "non-DSGL technology" and "non-DSGL related services").

RECOMMENDATION 1: Taking into account the proposed amendments in the DTC Amendment Bill, the DTC Act should be adjusted to include an over-arching provision covering the supply of goods, technology, and related services that may prejudice Australia's national interest but are not captured on the DSGL.

2. Prevention preferred

2.0 A preventive rather than a punitive approach should inform compliance. Penalties assume that a contravention has occurred, which means that the (irreparable) damage has already been done. Prevention is preferable. That is achieved by the extension of the application of the DTC Act's prohibitions to non-DSGL goods, technology and related services as outlined above, defined by clear and granular criteria, timely guidance by accredited export control compliance advisors and Defence Export Controls (DEC), and *'in terrorem'* (creating fear, especially to deter violations of the law or other undesirable acts) penalties.

2.1 Stakeholders very positively assessed DEC's outreach through seminars, including in concert with other government agencies, that are held from time to time. We heard repeated requests for more of this planned and targeted activity and agree that a regular schedule of outreach should be a priority. It would significantly raise stakeholders' awareness and understanding of the DTC Act, its purpose and compliance processes, and would contribute to the 'self-help' objective described in **Section 3** below.

2.2 Importantly, it would align with the principle of 'co-design', which was emphasised by numerous stakeholders, particularly the research universities and the Australian Academy of Science. This is key to preventing unintended or undesirable consequences, or, at least, to minimising these and allowing stakeholders to plan for them if national interest considerations are paramount.

Stakeholder views:

"Additional awareness-raising and education is needed to underpin the Act's effectiveness and that balance [between national security and research, including that supported by international collaboration]."

(Group of Eight submission, p3)

"The Co-leads of the Review have expressed a view favouring an approach which is preventative rather than the punitive. To this end, compliance processes (and associated guidance materials) should reflect this, fostering cooperation and compliance and supporting researchers to make informed decisions. UA strongly supports this approach."

(Universities Australia submission, p2)

RECOMMENDATION 2: The Department of Defence (Defence) should maintain regular, pre-emptive outreach and education of stakeholders about emerging threat vectors and technologies of concern, including through a national network of accredited export control compliance advisors in key academic institutions, businesses, and peak bodies, to enhance a sense of shared responsibility for compliance with the DTC Act and preventing damage to the national interest.

3. Enabling self-help

3.0 The DTC Act and attendant regulations and guidance should focus on the outcome we seek, not on legislating the process. Several submissions observed that an over-arching statement of intent or purpose for the DTC Act would help stakeholders better comprehend its role, relevance, and their compliance obligations. We consider that a purpose statement would add little to the specific provisions we propose and in fact may serve to mislead stakeholders as to their obligations under the DTC Act.

3.1 We should enable stakeholders to determine their own most appropriate internal approach to compliance by giving them:

- granular clarity about what is intended to be covered by the provisions (examples of this can be seen in the elaboration of the 'public interest' test to be applied by the Commonwealth Director of Prosecutions in determining whether to institute a criminal prosecution, and in the proposed National Environmental Standards to define obligations more particularly under the *Environment Protection and Biodiversity Conservation Act 1999)*;
- a compendium of comprehensive guidelines and case studies (akin to ATO 'private rulings') to build awareness and understanding of relevant issues and precedents; and
- a clear self-help decision pathway – enabled by the above resources – to determine whether (a) the DTC Act applies; (b) the issue is a relatively straightforward application, or, if it is more complex or contentious; (c) it is appropriate to consult accredited export control compliance advisors (see **Section 4**, below) to inform a decision about whether to proceed with a permit application or seek DEC advice.

3.2 Many stakeholders emphasised the need for ongoing, close consultation in the development of regulatory measures that affect their interests. We agree. The granular list of criteria should be co-designed by DEC and key stakeholders (e.g., research universities, peak bodies, primes, and other larger companies) to help raise awareness and mutual understanding of the intent and implications of these measures.

3.3 We envisage that these criteria would evolve and be subject to regular review, in close consultation with stakeholders. A very indicative draft list of the sort of criteria and considerations that would be encompassed is at **Appendix F.**

3.4 These criteria should not be confused with the legislative criteria that DEC uses to guide permit decision-making (see **Appendix D**). The intent of the granular criteria is to support stakeholders in better understanding the potential application of the DTC Act to their activities and to help improve their internal risk assessment and compliance processes.

Stakeholder views

"A principles-based approach to information-sharing could enrich the information contained in the DSGL so that academic interpretations are more likely to align with Defence objectives and intent. They would also significantly improve the explainability of the DSGL within a research context.

"We recommend that anonymised decisions are published in relation to the categories in the DSGL, and if deemed necessary, only available for review by registered users who sign a deed of confidentiality. These rulings would provide access to information about the permits granted or denied for a given category of the DSGL, in relation to country of export and end-use, and potentially consignee and end-user. This information could be used by research organisations to understand the types of activities likely to require a permit, and the types of activities likely to be granted a permit. Such information would significantly enhance internal compliance and training activities within research organisations without further straining Defence resources."

(Australasian Research Management Society submission, p2)

"…NTEU would support the more general publication of de-identified application outcomes to help assist individual researchers in understanding the permit landscape."

(National Tertiary Education Union submission, p1)

"The need for clear guidance materials and case studies is critical in such a complex and high stakes context.

"Any changes to legislation or policy should also recognise the unique barriers and challenges faced by institutions of varying size and sale. This may include consideration of targeted support, training, and resources to support compliance – supporting more inclusive participation of universities in defence research."

(Universities Australia submission, pp1-2)

RECOMMENDATION 3: Defence should closely engage with key stakeholders to co-design and maintain up-to-date granular criteria that help stakeholders understand the application of the DTC Act and their compliance obligations and attendant processes. This should be supported by an evolving suite of guidelines and case studies that will help inform initial self-assessment, such that approaches to DEC for guidance are mature, detailed, and facilitate swift responses.

4. Expanding the network: enhanced outreach through accredited export control compliance advisors

4.0 We should encourage the community of stakeholders to self-help by ensuring their ready access to a system of accredited export control compliance advisors, initially at least in universities and peak bodies. Accredited by Defence to provide informed advice, they would not themselves be decision-makers. Rather, they would enhance the 'triaging' process, maximising business-as-usual treatment for relatively straightforward applications, while winnowing the more complex or contestable cases and ensuring they are detailed and mature enough for referral to DEC for guidance and adjudication.

4.1 The system should be co-designed through close consultation by Defence with key stakeholders where core staff already focus on export control compliance. This nucleus could expand, including, potentially, to embrace commercial providers of such services.

4.2 Accredited export control compliance advisors ideally would have a minimum-level national security clearance which would facilitate information-sharing and dialogue with Defence (and other agencies) about evolving concerns and threat indicators, especially as these pertain to rapidly emerging, disruptive technologies.

4.3 Feedback during consultations and in submissions suggests this would be particularly useful for research universities. While recognising that security restrictions necessarily limit what information can be shared outside government and intelligence circles, stakeholders nonetheless repeatedly emphasised the value of even indicative briefings on strategic trends, emerging technologies, and countries of concern. It would more effectively serve the purpose of the DTC Act and, we believe, increase the focused efficiency of DEC, if information flow could be improved.

Stakeholder views:

"Consideration should be given to certifying/accrediting export controls practitioners, similar to the licensing of customs brokers in line with Division 3 Part XI of the Customs Act 1901.

"Similar to customs brokers, individuals would need an academic qualification or acquired experience to become an accredited export controls practitioner, necessitating the creation of formal TAFE or university courses on export controls compliance. This strategy would address the current issue of insufficient supply of, and high demand for, export controls compliance professionals in Australia. It would upskill workers and ensure future demand for this skill set can be achieved. Requiring the accreditation of export control professionals would also contribute to greater awareness and understanding of export controls across industry and help ensure that industry members liaising with DEC are educated on export controls."

(Babcock submission, p3)

RECOMMENDATION 4: In close consultation with stakeholders, especially universities, Defence should develop and implement an accreditation system to build and maintain a cadre of export control compliance advisors, whose credentials will be regularly assessed and may be revoked if required.

5. A scaled system of penalties

5.0 We question whether the current penalty regime is sufficient to serve as a preventive deterrent (see **Section 2** above). Given the financial stakes potentially involved, especially in pursuing deeper AUKUS collaboration, the measure of 'penalty units' is a marginal cost of doing business and of little financial consequence, at least for significant stakeholders.

5.1 We propose increased, but still scaled, penalty provisions (e.g., infringement notices, substantial civil penalties, criminal sanctions including jail sentences) consistent with the 'in terrorem' principle to demonstrate (including to the US) seriousness of resolve. By way of example, the penalties currently available under the *Competition and Consumer Act 2010* provide for:

a) Infringement notices with relatively small financial penalties for minor non-compliance.

b) Financial penalties for businesses where non-compliance is the result of negligence, recklessness or deliberate intent, of a fine not exceeding the greater of the following:
   - $50,000,000;
   - three times the value of the "reasonably attributable" benefit obtained from the conduct, if the court can determine this; or
   - if a court cannot determine the benefit, 30 per cent of the corporation's adjusted turnover during the breach period.

c) Criminal penalties, notably, imprisonment for individuals, for the most deliberate and egregious non-compliance.

5.2 Some stakeholders expressed concern about the apparently sweeping nature of this proposal, including how to determine what constitutes "due diligence" or "reasonable efforts" to prevent breaches. For example, the National Tertiary Education Union (NTEU) submission noted that:

"The NTEU is concerned that any moves to increase penalties or change the penalty regime could inadvertently impact unaware university academics and researchers who routinely engage in research and publication without necessarily having full awareness of the Act's definitions and restrictions with regards to intangible supply. This may arise given the wide disparities we have observed between the local institutional capacities for, and approaches to, DTCA support, training and monitoring. As it presently stands, 6 of the 44 universities in Australia currently deploy over 50 per cent of all research expenditure in the sector. At the other end of the scale, the bottom 6 universities only deploy 1.5% of the total. This wide disparity in research activity means that staff at smaller universities do not have access to the highly trained and experienced research support teams that their colleagues at research-intensive institutions do, and thus penalties may apply to individuals when institutions have failed to appropriately support staff and ensure awareness and compliance."

5.3 We acknowledge this concern and the need for careful design and application of this element. Thus, we stress the importance of proportionality and appropriateness and the need to bear in mind the key considerations such as negligence, recklessness or deliberate intent in determining the nature of any breach and the attendant sanction.

5.4 Moreover, we believe this risk is minimal and manageable in concert with the implementation of our other recommendations (e.g., granular criteria to facilitate initial self-help assessments, a compendium of case studies and anonymised precedents and rulings, and an expanding network of accredited export control compliance advisors).

Ultimately, the courts and tribunals operate as an effective mitigation to any potential risks of administrative over-reach.

RECOMMENDATION 5: Penalties for breaches of the DTC Act should be significant to operate as an effective deterrent for deliberate, reckless or negligent acts. The penalties should be scaled to reflect the seriousness of the breach and culpability of the perpetrator. Examples of an appropriate penalty regime can be found in the *Competition and Consumer Act 2010* and the *Corporations Act 2001*.

6. Strengthening the regulator's capacity and capability

6.0 Under the current DTC Act, the Secretary of Defence may appoint authorised officers to conduct certain investigations. However, the investigatory powers, and the circumstances in which they may be exercised are limited and, in our view, not sufficient to meet future requirements.

6.1 Defence's capacity and authority to exercise its role as a Commonwealth regulator and invigilator must be strengthened, extending the investigative powers of authorised officers to all forms of suspected or potential non-compliance mindful that resources, especially qualified staff, are finite. Such investigative powers are common in regulatory agencies where they have reason to believe that a person may have information to assist the agency in relation to a suspected or potential non compliance of its legislation (eg. Section 155 of the *Competition and Consumer Act 2010*). We note that this was an un-actioned recommendation (6) of the Thom review in 2018 and believe this should be a priority, consistent with the goals of the changes proposed in the DTC Amendment Bill.

6.2 The training of staff within DEC to undertake investigatory processes may be facilitated by a temporary exchange of staff with other regulatory agencies to build Defence capability in this area.

6.3 Consistent with this goal, Defence internal processes should be streamlined to enable DEC to focus on: (a) maintenance of the DSGL and overarching criteria for regulation; (b) providing timely guidance and rulings, including through enhanced, more regular outreach; and (c) enforcement and compliance.

6.4 Our recommendation only relates to the investigative powers and processes of Defence. Currently investigations into potential breaches of the DTC Act are conducted by the Australian Federal Police. However, once an investigation into potential non-compliance has been completed, further action should then be referred to the Australian Government Solicitor (for civil penalty proceedings) or the Commonwealth Director of Public Prosecutions (for criminal proceedings). This is the standard practice for other regulatory agencies.

6.5 Defence also should identify and prioritise, including with adequate funding, near-term technical enhancements. This includes an upgrade of the current permit processing system to enable a more client-centric and user-friendly experience. An upgraded client management system that is focused on improving database interoperability and reducing manual touch points would deliver better efficiencies for the regulator and allow DEC to concentrate efforts on more complex issues, as well as its outreach and compliance activities.

Stakeholder views:

"… establishing an active investigation and enforcement division / arm of Defence Export Controls would contribute to greater compliance outcomes and sophistication of the Australian defence and dual use exporting base."

(Goal Group submission, p4)

"The ABF is supportive of recommendation six of the 2018 Review and could support Defence in the establishment of monitoring and investigative powers. The 2023 Review should consider amendments to the DTC Act to reflect qualified commonwealth investigators, such as ABF Counter Proliferation officers, to be provided 'Authorised Officer' power by the Defence Secretary under the DTC Act in order to lead and/or support monitoring and investigations. The above opportunity for improvement is based on the similar offence provisions under the DTC Act to regulation 13E, for which ABF Counter Proliferation Officers currently monitor and investigate."

(Australian Border Force submission, p2)

RECOMMENDATION 6: Defence should be given enhanced monitoring and investigative powers to invigilate and enforce compliance with the DTC Act and should ensure that properly trained staff are allocated to exercise these powers.

7. Brokering

7.0 Rapid technological change and the heightened threat of intangible supply of sensitive technologies and knowledge across virtual borders calls into question the relevance of provisions in the current DTC Act pertaining to "brokering" (Divisions 2 and 3 of Part 2 of the DTC Act).

7.1 The current legislative requirements relating to offshore transfers seem unduly focused on a specific process involving the use of brokers. Consequently, there is an attendant responsibility placed on DEC to assess the "fit and proper" status of a broker and to seek to impose obligations on those licensed to carry out brokering activities.

7.2 We consider these requirements to be neither necessary nor an efficient utilisation of DEC's limited resources. The purpose of the DTC Act is to prevent the transfer of military or dual-use technology that would be contrary to Australia's national interest. It matters little whether those transfers are facilitated by agents or brokers. What is relevant is that the principal owner of the technology is prevented from undertaking a prejudicial transfer, by whatever means.

7.3 Anecdotally, current arrangements consume significant time and effort on the part of both DEC and applicants. Streamlining this process overall, with a greater emphasis on initial scrutiny and qualification of applications to engage in the supply of controlled goods, or technology, would

be more efficient and would reduce the ongoing administrative burden for all concerned.

7.4 Proposed changes described in the DTC Amendment Bill are relevant to this issue.

7.5 Recommendation (5) of the Thom review in 2018 also addressed limitations of the current DTC Act but was not actioned.

RECOMMENDATION 7: Subject to consideration of the DTC Amendment Bill, the current brokering provisions of the DTC Act should be amended to ensure that the DTC Act applies regardless of how or where the supply of DSGL, or non-DSGL goods, technology and related services occurs.

8. Simplifying the permit process

8.0 Several stakeholders raised the issue of administrative burden associated with the current permit process. We agree that there is scope to streamline this process to deliver efficiencies for both the regulator and stakeholders. An example of this could be introducing certain exemptions or 'fast-track' processes for low-risk activities or encouraging a greater uptake and use of broad-based permits. This would be particularly valuable where there are multiple entities involved in an ongoing project collaboration.

Stakeholder views:

"… an exemption to the permit requirement to allow the return of equipment, repaired in Australia to Allied, or even 5-Eyes countries … would reduce the overhead and also remove some of the workload from your staff within Defence Export Controls (DEC)."

(Leonardo submission email)

"The government might explore measures to streamline the integration between the legislative requirements of the DTC Act and Customs Act to allow for the issuance of a unified permit that covers both tangible and intangible components. The consolidation of permits would ease the administrative burden faced by the Australian defence industry, which frequently deals with exports involving both aspects. This simplification will foster operational efficiency without compromising national security standards."

(Australian Industry Group submission, p4)

RECOMMENDATION 8: Defence should implement measures to streamline the permit application process and the need for multiple, individual permits across the DTC Act and the *Customs Act 1901*.

9. Basic / fundamental research

9.0 Numerous stakeholders, notably universities, indicated support for a more holistic definition of research, to provide greater clarity and consistency.

9.1 The DSGL currently defines "basic scientific research" as "experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective". In contrast, the US applies a fundamental research definition which incorporates basic and applied research in science, engineering, or mathematics, the results of which are ordinarily published and shared within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

9.2 Our consultations revealed a widely held view that the definition of "basic scientific research" should be reviewed, with a view to amending the definition to capture fundamental research. Many researchers in the dual-use field find it hard to identify the threshold between what is and is not fundamental research.

9.3 A more consistent application of the research definition, in line with our partners and international best practice, would provide greater clarity to the sector, reduce administrative burden, and enable improved research collaboration. We note that this issue will be explored further as part of the DTC Amendment Bill and subsequent consultations with industry and academia on the underpinning *Defence Trade Controls Regulation 2013.*

Stakeholder views:

"Greater clarity around the distinction between basic and applied research than the current definition in 4.2 of the DSGL provides, to provide more confidence to researchers of whether their particular project comprises 'basic' research. The current definition means that any dual-use technology in the DSGL could be considered either basic or applied, depending on whether emphasis is placed by those assessing the work on the physical principles or the possible end uses."

(Dr Sean O'Byrne submission, p4)

"The current legislation provides an exemption for technology or software in the public domain and basic scientific research. However, the definition of 'basic scientific research' in the DSGL is very narrow and does not apply to most activity that occurs in a university setting. In addition, its scope and application have been unclear on some occasions."

(University of Melbourne submission, p2)

RECOMMENDATION 9: Subject to consideration of the DTC Amendment Bill, Defence should amend the current definition of "basic scientific research" to better align with the US definition of "fundamental research", encompassing activities that ordinarily result in publishing.

10. Enhancing high-level awareness and overview

10.0 The efficient functioning of the national framework of export controls and other arrangements to safeguard the national interest requires regular invigilation at senior levels of government. The heightened expectations and obligations upon Australia arising from AUKUS underscore this. Existing mechanisms would seem fit for this purpose, although these probably have been under-utilised in the relatively more benign strategic environment in which these controls have operated until recently.

10.1 More deliberate use could be made of mechanisms like the Secretaries' Committee on National Security (SCNS), both to increase high-level visibility of performance and compliance and to provide a forum to decide approaches to complex and contested cases that defy resolution through normal inter-agency dialogue. This also would help ameliorate the risk of accreting regulatory requirements over-burdening business and researchers.

Stakeholder views:

"The increasingly complex compliance burden for Australian research organisations but especially universities in this area risks creating a scenario where university professional staff are increasingly focused on complying with Australian Government legislation and less able to internally assess, mitigate and respond to institutional risks.

"For example, an Australian researcher in a university setting who is successful in a US Defence Grant, is also named on a Defence Industry Security Program contract, and which involves the supply and export of DSGL technology, would potentially trigger their host institution's relevant administration unit to make notifications, undertake internal compliance and/or commence permit applications across DECO (export controls), the DFAT (foreign arrangements), and DISP (risk register & other compliance activities). The activity itself would likely be subject to that university's counter foreign interference framework in alignment with the UFIT Guidelines, and the academic's research area would likely require additional training and engagement due to a contextual change in the institution's internal sanctions risk assessments.

"Often only 1 or 2 FTE per institution covers Export Controls, Sanctions, DISP, Foreign Relations, UFIT, the Foreign Influence Scheme, critical infrastructure and government consultation engagement and liaison."

(Australasian Research Management Society submission, p3)

RECOMMENDATION 10: Defence should establish a mechanism to facilitate greater awareness and engagement on complex applications at senior levels of government. The mechanism can create closer collaboration to support Defence and other agencies, including the Department of Foreign Affairs and Trade, in managing and adjudicating more complex or sensitive applications.

IV. About the review

Background to the review

1.0 In accordance with section 74B of the DTC Act, an independent review of the DTC Act is required every five years to ensure Australia's export control regime remains fit for purpose, balancing appropriate safeguards with a rapidly evolving strategic environment. Dr Vivienne Thom AM completed the first review in 2018.

1.1 On 29 August 2023, the Albanese Government announced the second independent review of the DTC Act and appointed Mr Peter Tesch and Professor Graeme Samuel AC as the co-leads.

Scope of the review

1.2 This review is limited to the operation of the DTC Act. Subsection 74B(1) specifically excluded Parts Three and Four (which relate to the Defense Trade Cooperation Treaty between Australia and the United States of America Concerning Defense Trade Cooperation) from the review's scope.

1.3 The review examined all other parts of the DTC Act with consideration of the broader regulatory environment to provide evidence-based, practical recommendations to improve the Act and supporting policy. Specifically, the review considered:

(a) whether the DTC Act is fit for purpose, including whether it contains appropriate controls to effectively manage the supply, brokering and publication of intangible technology;

(b) whether there are any gaps in the DTC Act's controls;

(c) whether the DTC Act strikes an appropriate balance between fulfilling national security requirements and supporting trade, research and international collaboration;

(d) whether any unintended consequences are resulting from the DTC Act's controls;

(e) whether the DTC Act aligns with international best practice; and

(f) any other matters considered relevant, including human rights considerations.

1.4 The full 2023 terms of reference is at **Appendix A**.

1.5 The review examined the current DTC Act alongside existing policies and regulations surrounding the protection of sensitive and critical technology. The review has occurred amongst other initiatives, including reforms to the *Defence Act 1903*, introduction of the Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023, Critical Technology Visa Screening, and the DTC Amendment Bill.

Consultation

1.6 Extensive stakeholder consultation informed the review, encompassing face-to-face bilateral briefings and meetings, public submissions and comments, and focused roundtable discussions with representatives from defence industry, academia, and government. Roundtables were held in Brisbane, Sydney, Adelaide, Melbourne, Perth and Canberra between September and October 2023.

1.7 A complete list of stakeholders who took part in the roundtables is at **Appendix C**.

V. 2018 review

Recommendations and actions taken

1.0 The first review of the DTC Act was completed in 2018 by Dr Vivienne Thom AM. The 2018 review assessed whether the DTC Act provided appropriate levels of regulation and security for controlled technologies; aligned with international best practice for export controls; and did not unnecessarily restrict trade, research, and international collaboration.

1.1 The 2018 review made nine recommendations that the former government accepted. After the 2018 review, all non-legislative recommendations were implemented but five legislative reform recommendations were not taken forward.

This was due to:

(a) COVID-19 disruptions;

(b) concerns among the university sector of regulatory overreach;

(c) lack of clarity on the pathway forward for whole-of-government protection of critical technology; and

(d) lesser concerns about the impact and risk of the gaps in technology protection.

1.2 Since the 2018 review, Australia has since introduced measures, such as the Foreign Arrangements Scheme, the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022*, and the University Foreign Arrangements Scheme. The changing strategic landscape as well as the broader whole-of-government initiatives around the protection of sensitive technologies required a fresh look at the operation of the DTC Act.

Appendix A: 2023 terms of reference

Background

1.0 Defence regulates the export of military and dual-use goods and technologies through four key pieces of legislation. The Defence Trade Controls Act 2012 (the Act) regulates the intangible (electronic) supply, brokering and publication of technology and software controlled in the Defence and Strategic Goods List (DSGL). The Act was passed in 2012 to strengthen Australia's export controls and align with international best practice.

1.1 Section 74B of the Act requires that the Minister for Defence cause a review of the operation of the Act (other than Parts Three and Four) at intervals of no longer than five years. The first review was completed in 2018 by Dr Vivienne Thom AM.

Aim

1.2 The aim of the review is to examine the operation of the Act and to provide Government with recommendations that ensure the Act is an effective and efficient component of Australia's export control regime.

1.3 The review will aim to ensure the Act appropriately meets Australia's national security requirements and provides appropriate levels of regulation for the supply, publication and brokering of technologies. It will also aim to ensure the Act aligns with international best practice for export controls and does not unnecessarily restrict trade, research and international collaboration.

Scope

1.4 The review is limited to the operation of the Act. Subsection 74B (1) specifically excludes Parts Three and Four (which relate to the Defense Trade Cooperation Treaty between Australia and the United States) from the review's scope.

1.5 The review will examine all other parts of the Act with consideration of the broader regulatory environment to provide evidence-based, practical recommendations to improve the Act and supporting policy. Specifically, the review will consider:

- whether the Act is fit for purpose, including whether it contains appropriate controls to effectively manage the supply, brokering and publication of intangible technology;
- whether there are any gaps in the Act's controls;
- whether the Act strikes an appropriate balance between fulfilling national security requirements and supporting trade, research and international collaboration;
- whether any unintended consequences are resulting from the Act's controls;
- whether the Act aligns with international best practice; and
- any other matters considered relevant, including human rights considerations.

1.6 The review should consider the Act alongside existing regulation, policy and legislation relating to export controls and the protection of sensitive and critical technology. It should evaluate the Act in the context of other reforms to Australia's export control regime that Government is considering. It should also consider the recommendations of the previous review that were not implemented.

Consultation

1.7 Stakeholder input on the operation and effectiveness of the Act is crucial to the review. Accordingly, the review will involve extensive engagement with relevant stakeholders, including relevant Federal Ministers and government agencies, and representatives from industry,

higher education and research sectors. This will occur through consultation, the release of papers, and receipt of submissions to ensure stakeholder views are considered before making recommendations.

Delivery

1.8 The review's final report will be provided to Deputy Prime Minister and Minister for Defence.

Appendix B: List of submissions

1. Aerotech Group
2. Ai Group
3. Alkath Group
4. Australasian Research Management Society
5. Australia Technology Network of Universities
6. Australian Academy of Science
7. Australian Federal Police
8. Babcock Pty Ltd
9. BAE Systems
10. Brendan Walker-Munro
11. Colonel Steven Cleggett
12. Cube Pilot
13. Dave Buys
14. Department of Home Affairs and Australian Border Force
15. Garmin Australasia Pty Ltd
16. Goal Group
17. Griffith University
18. Group of Eight Australia
19. Infrascan Thermal Imaging Pty Ltd
20. Professor Jeremy Mould
21. Leonardo
22. Lightforce Group
23. Lou Marks
24. Mitsubishi
25. National Tertiary Education Union
26. Peter Cunningham
27. Queensland University of Technology
28. Reach Robotics
29. Robert Borsak MLC
30. Royal College of Pathologists of Australasia
31. Royal Melbourne Institute of Technology
32. Scyne Advisory
33. Sean O'Byrne
34. Stephen Hyde
35. Steven Whitehead
36. Thales Australia
37. Toll Group, Senior Vice President & Director, Paul Crowley
38. Toll Group, Vice President Christopher Summer
39. Trusted Autonomous Systems
40. Universities Australia
41. University of Adelaide
42. University of Melbourne
43. University of New South Wales
44. University of Newcastle
45. University of Southern Queensland
46. University of Technology Sydney

***Note** this list does not include 15 confidential submissions.*

Appendix C: List of meetings

Peak body representatives

13 November 2023, Australian Industry Group, Executive Director, Canberra

Ministerial meetings

24 October 2023, Minister for Education, Chief of Staff, Canberra

24 October 2023, Minister for Foreign Affairs & Trade, Deputy Chief of Staff, Canberra

25 October 2023, Minister for Defence Industry, Canberra

25 October 2023, Deputy Prime Minister, Canberra

25 October 2023, Minister of Home Affairs, Advisers, Canberra

Departmental meetings

20 September 2023, Department of Defence, Acting Assistant Secretary and Senior Defence Legal, Defence Export Controls, Canberra

20 September 2023, Department of Defence, First Assistant Secretary Defence Industry Policy, Canberra

20 September 2023, Department of Defence, Deputy Secretary Strategy, Policy and Industry, Canberra

20 September 2023, Department of Defence, Secretary, Canberra

20 September 2023, Australian Defence Force, Chief of the Defence Forces, Canberra

20 September 2023, Department of Defence, First Assistant Secretary, Defence Security, Canberra

20 September 2023, Department of Defence, Assistant Secretary, Defence Industry, Canberra

21 September 2023, Department of Defence, Directors, Defence Export Control, Canberra

21 September 2023, Department of Defence, Assistant Secretary Defence Industry Policy, Canberra

21 September 2023, Department of Defence, First Assistant Secretary AUKUS Advanced Capabilities, Canberra

21 September 2023, Department of Industry, Science and Resources, General Manager National Security Engagement Branch, Canberra

21 September 2023, Department of Industry, Science and Resources, Director National Security Engagement Branch, Canberra

21 September 2023, Department of Industry, Science and Resources, Head of Division Minerals and Resources, Canberra

21 September 2023, Department of Industry, Science and Resources, Technology and Digital Division, Canberra

21 September 2023, Australian Space Agency, Acting Deputy Head, Canberra

21 September 2023, Australian Space Agency, General Manager Space Policy, Canberra

21 September 2023, Department of Prime Minister & Cabinet, Deputy Secretary International Security, Canberra

21 September 2023, Department of Foreign Affairs & Trade, First Assistant Secretary Defence and National Security Policy, Canberra

21 September 2023, Department of Foreign Affairs & Trade, First Assistant Secretary International Security Division, Canberra

21 September 2023, Department of Foreign Affairs & Trade, First Assistant Secretary International Security Division, Canberra

21 September 2023, Department of Foreign Affairs & Trade, First Assistant Secretary Geostrategy and Partnership Division, Canberra

21 September 2023, Department of Foreign Affairs & Trade, Regulatory and Legal Policy Division, Canberra

24 October 2023, Department of Defence, Assistant Secretary Strategic Engagement & Corporate, Canberra

25 October 2023, Department of Foreign Affairs & Trade, Assistant Secretary AUKUS Non-Proliferation Branch, Canberra

26 October 2023, Department of Defence, First Assistant Secretary Defence Industry Policy, Canberra

26 October 2023, Department of Defence, Directors, Defence Export Control, Canberra

26 October 2023, Department of Defence, Deputy Secretary Strategy Policy & Industry, Canberra

13 November 2023, Department of Defence, Chief Defence Scientist, Canberra

07 December 2023, Department of Defence, Secretary of Defence

Participants at stakeholder roundtables

26 September 2023, Brisbane

- Airbus Group Australia
- Boeing Australia and New Zealand
- Gilmour Space
- Griffith University
- Hypersonix
- NIOA Australia
- Queensland University of Technology
- University of Queensland
- University of Southern Queensland

28 September 2023, Sydney

- Australasian Research Management Society
- Macquarie University
- Thales Australia
- University of Newcastle
- University of New South Wales
- University of Wollongong

4 October 2023, Adelaide

- Australian Defence Information and Electronic Systems Association (ADIESA)
- BAE Systems Australia
- Defence Team Centre
- Light Force Group
- University of Adelaide
- University of South Australia

10 October 2023, Melbourne

- Boeing Australia and New Zealand
- Deakin University
- National Tertiary Education Union
- Royal Melbourne Institute of Technology
- Swinburne University
- University of Melbourne

17 October 2023, Perth

- Austal
- Babcock Australasia
- Bechtel Australia
- Curtin University
- Edith Cowan University
- Murdoch University
- Raytheon Australia

24 October 2023, Canberra

- Australia National University
- Australian Research Council
- Australian Space Agency
- Babcock Australasia
- CEA Technologies
- Defence Trailblazer
- OMNI
- Raytheon Australia
- Science Academy
- Skykraft
- The Group of Eight
- Universities Australia
- University of Canberra
- University of Sydney
- UNSW Canberra

Appendix D: 12 legislative criteria

Section 8 of the *Defence Trade Controls Regulation 2013*

For section 25A of the Act, the following table sets out the criteria to which the Minister must have regard in deciding whether a thing (being the supply of DSGL technology, arranging for other persons to supply goods listed in the DSGL or DGSL technology, or the publication of certain DSGL technology) would, or would not, prejudice the security, defence or international relations of Australia.

Criteria for deciding whether things prejudicial to security, defence or international relations of Australia	
Item	Criterion
1	The risk that the DSGL technology or the goods may go to or become available to a country upon which the Security Council of the United Nations or Australia has imposed a sanction
2	The risk that the DSGL technology or the goods may go to or become available to a country where it may be used in a way contrary to Australia's international obligations or commitments
3	The risk that the DSGL technology or the goods may be used to commit or facilitate serious abuses of human rights
4	Whether the supply of the DSGL technology or the goods, or the publication of the DSGL technology: (a) may aggravate: (i) an existing threat to international peace and security or to the peace and security of a region; or (ii) a particular event or conflict of concern to Australia; or (b) may otherwise contribute to political instability internationally or in a particular region
5	Whether the DSGL technology or the goods may: (a) be used for conflict within a country or for international conflict by a country; or (b) further militarise conflict within a country
6	Whether the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may compromise or adversely affect Australia's defence or security interests, its obligations to its allies or its international obligations and responsibilities
7	Whether the DSGL technology or the goods may go to or become available to a country that has policies or strategic interests that are inconsistent with the policies and strategic interests of Australia or its allies
8	The risk that the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may: (a) adversely affect Australia's military capability; or (b) substantially compromise an Australian defence operation; or (c) increase the military capability of a country that is a potential adversary of Australia
9	The risk that the DSGL technology or the goods may go to or become available to a country: (a) that is developing, or is reasonably suspected of developing: (i) weapons that may be capable of causing mass destruction; or (ii) the means of delivering such weapons; or (b) that supports, or is reasonably suspected of supporting, terrorism; or (c) whose actions or foreign policies pose a risk of major disruption in global stability or the stability of a particular region
10	Whether the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may lead to a reaction by another country that may damage Australia's interests or relations with the other country or with a particular region
11	Whether the DSGL technology or the goods may be used for mercenary activities or a terrorist or other criminal activity
12	Whether preventing the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may have an adverse effect on Australian industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia

Appendix E: Export controls framework in Australia

Australia's export controls and related legislation

1.0 Australia regulates the export, supply, publication and brokering of controlled military and dual-use goods, software and technology, including parts, components and related materials, equipment and software through four key pieces of legislation:

(a) The **DTC Act** forms part of Australia's wider export control framework, which regulates the supply, publication and brokering of military and dual-use goods, software and technology.

(b) The ***Customs (Prohibited Exports) Regulations 1958*** regulates the tangible export of military and dual-use goods, software and technology from Australia.

(c) ***Customs Act 1901*** provides the Minister for Defence with a discretionary power to prohibit the physical export of uncontrolled goods that may be for a military end-use that would prejudice Australia's security, defence or international relations.

(d) ***Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*** provides the Minister for Defence with the discretionary power to prohibit the supply of any goods, or export of uncontrolled goods that may be used in a weapons of mass destruction (WMD) program, as well as the provision of services including the provision of technology electronically that may assist a WMD program.

1.1 The purpose of Australia's export controls framework is to facilitate responsible exports of military and dual-use goods, software and technology and prevent the illicit trade of conventional weapons and proliferation of WMD.

International obligations and commitments

1.2 Australia's export control provisions reflect Australia's international obligations as a member of global non-proliferation regimes, signatory to the Arms Trade Treaty and four main multilateral export control regimes:

(a) **Australia Group**[1] for chemical and biological weapons materials;

(b) **Missile Technology Control Regime**[2] for ballistic missiles and other WMD delivery systems;

(c) **Nuclear Suppliers Group**[3] for nuclear and nuclear related goods; and

(d) **Wassenaar Arrangement**[4] for conventional arms and dual-use goods, software, and technologies.

Defence and Strategic Goods List (DSGL)

1.3 The DSGL is a legislative instrument. It is a consolidated list of controlled military and dual-use goods, software and technology, agreed across the four multilateral export control regimes. The DSGL also contains Australian-specific controls (i.e., unilateral controls) relating to firearms and explosives.

1.4 As a member of four key multilateral export control regimes, Australia plays an active role in shaping and influencing new or revised controlled goods and technologies and the DSGL has two parts:

(a) **Part 1 – Munitions list** captures goods, software and technology specifically designed or modified for military use; and

(b) **Part 2 – Dual-use** list captures dual-use goods and technologies developed for commercial needs but may also be used for military purposes or WMD programs.

The DTC Act

1.5 The DTC Act was introduced to serve two purposes:

(a) to strengthen Australia's export controls by closing previously identified gaps (controls that fell below the best practice guidance of the four multilateral export control regimes); and

(b) to give effect to the Treaty between the Government of Australia and the Government of the United States of America Concerning Defense Trade Cooperation (the Defense Trade Cooperation Treaty between Australia and the United States of America),[5] which entered into force on 16 May 2013 (outside scope of the 2023 independent review).

The DTC Act currently regulates the:

(a) **intangible supply** of, or the provision of access to, DSGL software and technology from a place in Australia to 'another person' in a place outside Australia[6];

(b) **brokering of DSGL Part 1** goods and technology, as well as DSGL Part 2 goods and technology where that DSGL Part 2 goods and technology will or may be used for a military end-use or WMD program; and

(c) **publication of DSGL Part 1** software and technology.

1.6 The DTC Act also provides the Minister for Defence certain powers to prohibit certain export, supplies and services where the Minister reasonably believes that, such activities would prejudice the security, defence or international relations of Australia. These prohibition powers include prohibiting:

(a) a person from supplying DSGL software or technology to another person in any circumstance (section 14);

(b) a person from publishing DSGL Part 1 software or technology to the public or a section of the public (section 14B); and

(c) a person from brokering DSGL goods, software or technology (section 15A).

1.7 The DTC Act includes offences for persons who do certain activities without, or not in accordance with, a permit or approval given under the DTC Act.

1.8 The DCT Act provides that the Secretary for Defence may obtain information from a person or documents that are relevant to the operation of the DTC Act. Persons who hold permits under the DTC Act are required to keep certain records.

Administration of the DTC Act

1.9 Applications for permits under the DTC Act are assessed on a case-by-case basis by Defence Export Controls Branch (DEC) in Defence. The DTC Act allows the Minister (or their delegate) to issue a permit if they are satisfied that the supply of the DSGL technology would not prejudice the security, defence or international relations of Australia.

1 Australia is the permanent Chair of the Australia Group. The Australia Group, https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/index.html.
2 Missile Technology Control Regimes, https://mtcr.info/.
3 Nuclear Suppliers Group, https://www.nuclearsuppliersgroup.org/en/.
4 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Introduction, https://www.wassenaar.org/.
5 On 5 September 2007, the Australian Government entered into a treaty with the United States Government to create a framework for two-way trade between the two countries. The Treaty is implemented through Parts Three and Part Four of the Act, both which are outside the Scope of the Review, https://www.defence.gov.au/business-industry/export/controls/us-trade-treaty.
6 Oral supply of DSGL technology (from a person in Australia to another person outside of Australia) that has military end-use or WMD end-use.

2.0 As part of its assessment, Defence considers the nature and utility of the technology being supplied as well as the end user, end use and destination. Defence assesses supply, publication or brokering activities against the 12 legislative criteria listed in the *Defence Trade Controls Regulation 2013* to determine whether the activity may be prejudicial to the security, defence or international relations of Australia. These criteria broadly address a range of issues, including foreign policy, human rights, national security and Australia's international obligations (**Appendix D**).

Appendix F: Indicative draft granular criteria

(Refer also to *Defence Trade Control Regulation 2013* legislative criteria in **Appendix D**)

Goods and Technology	YES	NO
What is the primary purpose of the goods/technology? ➢ Can it be adapted for use by military/security forces? ➢ Can it facilitate human rights abuses (e.g. facial recognition technology that might be used for surveillance of dissident groups or ethnic minorities)?	☐	☐
Are the goods/technology with the same or similar specifications readily available to those parties/ in these markets?	☐	☐
Are you aware of previous supply of similar goods/technology by other countries that Australia would regard as comparable or like-minded in relation to fulfilling international obligations and responsible behavior (e.g., the United States, New Zealand, Canada, the United Kingdom, Japan and the European Union member states)?	☐	☐

Consignee and End-user	YES	NO
Are there known or reasonably suspected risks associated with the consignee or end-user? ➢ Are there credible risks of human rights violations in which the goods/technology might have direct or indirect utility? ➢ Are there risks of diversion of the goods/technology/ intellectual property to another entity or destination? ➢ Are there risks of loss or thefts of the goods/technology?	☐	☐
Have you previously supplied to these parties? ➢ Was a permit required?	☐	☐
Are you using an intermediary? ➢ If so, have you used them before and have you conducted any checks on their bona fides to determine if they are a reputable collaborator (e.g., not subject to criminal or other sanctions imposed by the United Nations or national governments).	☐	☐

Destination	YES	NO
Is the destination subject to the United Nations Security Council sanctions regimes and Australian autonomous sanctions regimes? ➢ If so, is a sanction permit in place?	☐	☐
Would supply of the goods/technology to this destination breach Australia's international obligations (e.g., the Arms Trade Treaty)?	☐	☐
Would supply cause concerns to the government of the recipient country? ➢ Is a sanctioned destination?	☐	☐

***Note** these indicative draft granular criteria are to be co-designed with stakeholders and maintained and updated in ongoing close consultation with them.*