

Question on Notice – from Senator Fawcett

Senator FAWCETT: You may have heard, if you were monitoring earlier, when I asked the universities and research sector about definitions and whether there were any particular definitions that they thought were too broad or created uncertainty. So I'd ask each of you to take on notice: are there any definitions within the legislation that you think are so broad that they create uncertainty and result in all the impacts you've talked about? Any specific definitions and your recommendation as to how they could be changed would be welcome.

Mr Smith: I will jump in, because we have an answer to that already. We do have some concerns around the dual-nationals element of this. In terms of managing dual nationals, any company that is working in this arena understands that there are some significant sensitivities around dual-national workforces and all that sort of thing. On the definition of 'Australian person' versus 'foreign person', there can be a couple of very broad ways that you'd read that, particularly when it comes to, for example, Australian permanent resident as part of the definition of an Australian person. How you read that is open to interpretation, but there is a potential big gap within that definition as any Australian permanent resident, as long as they fall into the other pieces, could fulfil the guidelines within provision of this. That's almost a loophole in the other way, where it seems to be far wider and doesn't align with ITAR in terms of when you've got the prescribed-countries lists and things like that as well. That's one where we certainly feel there should potentially be some further detail from the department at least around what that looks like. That could come out in some of the subsequent regulation, but, on a read of the legislation, it's not there at the moment.

Leidos Australia Response

Leidos Australia would like to see an alignment of the definition of 'Australian person' with the criteria as listed in the Bill under the subsection 10(3) substitution of the legislation. This would provide clarity to industry as to the boundaries around persons authorised to receive transfer.

An example of such a clarification could be:

Australian person means:

- a. the Commonwealth, a State or a Territory or an authority of the Commonwealth, or
- b. an individual who is an Australian citizen or an individual who is a permanent resident of Australia provided they meet the criteria described within subsection 10(3)(b)(ii).
- c. a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

The substituted definition under subsection 10(3)(b)(ii) reads:

(b) the officer or employee is:

(ii) a permanent resident of Australia who meets the following criteria:

a. a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A);

b. a citizen or permanent resident of a foreign country that is not specified in an instrument under subsection 15 (4A) but who holds a current security clearance approved by an Australian Government agency or who has been screened by an employer to prevent the diversion of DSSL technology and data to a country that is not specified under subsection 15 (4A).

The Committee should also consider limitations on dual nationals where the individuals' other citizenship interacts with the *Autonomous Sanctions Regulations 2011*. This would ensure that penalties on export related to countries which are currently sanctioned by the Australian Government. The Committee should also consider how this applies to countries who may not be currently listed on the *Autonomous Sanctions Regulations 2011* but where it may not be in Australia's national interest to allow for the authorisation of transfer of goods.