

Re: Senate Foreign Affairs, Defence and Trade Legislation Committee Written Questions on Notice, Defence Trade Controls Amendment Bill 2023 [Provisions]

In response to the questions on notice from the Senate hearing on Friday, 1 March 2024, we provide the following responses based on combined input from the Australian Industry Group (Ai Group), The Boeing Company, and ANCA Pty Ltd.

1. What would be considered the 'gold standard' of industry engagement?

The 'gold standard' of industry engagement, as we envision it, involves a co-design process with industry, who would be involved at all stages of design and implementation of draft legislation. This would allow industry the opportunity to provide feedback and input on the options proposed, to raise and test various scenarios and inform the development of the draft legislation to reduce the obvious unintended consequences of the legislation as currently drafted. We look forward to engaging with the working groups to help provide this engagement and informed feedback.

2. Have we overshot in making the consequences of the legislation 'criminal'? Should the Australian system be comparable to the US system?

We acknowledge the intent behind the proposed legislation and the importance of ensuring export compliance. However, we are concerned that the proposed criminalisation may be disproportionate and overly punitive and risks penalising a predominantly compliant community. Our key concerns include:

- There should be a clear differentiation in penalties between breaches involving dual-use and military end-use goods, similar to the US system. While we are not advocating for an exact replication of the US approach, a more nuanced approach in Australia is necessary.
- The reform Act represents a significant shift from the previous requirement of proving malicious intent to a broader scope where any compliance failure could result in severe penalties. We question the necessity of this shift and request more information on the analysis of extant penalties and compliance that led to this decision.
- Given the impact of the proposed legislation on industry and Defence we would advocate for a longer grace period to be consulted.

3. Are there any directives that are too broad, creating uncertainty? What changes should be made?

Clarity and specificity are crucial in directives to avoid creating uncertainty – especially when there are immediate criminal penalties. It is challenging to assess the directives without visibility on the actual exemptions proposed by the US or Australia. We request the ability to review and comment on the list before finalisation to provide a more informed response.

4. Senator Shoebridge asked about the concerns of Defence's ability to deliver/assess the applications expected from the compliance burden.

Defence needs to be adequately resourced to handle the potential increase in licensing analysis, permit issuance, compliance enforcement, monitoring, and outreach/education/training required. We note that Defence appears to intend to have the

Defence Export Controls (DEC) vet and administer permits for the related *Securing Australia's Military Secrets Act*, which has the potential to create a very large number of applications on the same area – causing an immediate backlog while the time where an application must be considered is 90 days. When looking at recent examples of clearance backlogs – such as those for the *myClearance* system – delays more than 12 months have been regularly experienced by industry. Yet this system doesn't have the criminal penalties attached to it for breaches like the changes to the Defence Trade Controls Act and the Safeguarding Australia's Military Secrets do.

We recommend that Defence sets an objective response turn-around time and establishes key performance indicators across both the SAMS and Defence Trade Controls legislation where industry applications must be assessed by. We recommend these metrics are regularly reported on to this Committee to ensure appropriate accountability and bottlenecks are quickly ironed out.

Our recommendation under question (2) for a longer grace period would also have the benefit of allowing Defence to manage the significant increase in workload of the expected applications and for any proposed regulations introducing exemptions to the offences to be adopted.

Please let us know if you require any further information or clarification on these responses.