



Electro Optic Systems Holdings Limited (ABN: 95 092 708 364) Submission

Submission to the Senate Foreign Affairs, Defence and Trade Legislation
Committee inquiry into the Defence Trade Controls Amendment Bill 2023.

Introduction

Electro Optic Systems Holdings Limited ('EOS') is an ASX-listed organisation and Australia's largest sovereign defence exporter that employs approximately 350 staff across Australia and supports multiple Australian companies through its supply chain. Further, EOS currently earns more than 80 per cent of its revenues from exporting its goods to customers throughout the world. EOS welcomes the opportunity to provide a submission to this inquiry, and thanks the committee members for their work.

Need for Change

EOS understands the strategic uncertainty Australia faces, as reinforced by the 2023 *Defence Strategic Review*, and the value of the partnership between Australia, the UK and the US ('AUKUS') in helping to manage that uncertainty. As such, EOS acknowledges the requirement for changes to Australia's export framework by way of mechanisms such as the *Defence Trade Controls Amendment Bill 2023* (Cth) ('DTCA'), in order to operationalise AUKUS and deepen Australia's security ties with two of its oldest and staunchest allies. EOS supports such endeavours.

Unintended Consequences – Negative Impact on Australia's Exporting Domestic Defence Industry

In pursuing these changes, EOS is mindful of the risks of unintended consequences that may impact Australia's exporting domestic defence industry (the '**Industry**'), particularly where the DTCA changes may be inconsistent with Australia's efforts to work with like-minded allies and partners who do not sit within the AUKUS framework. Such consequences may have inadvertent impacts on the Industry's competitiveness and foreign market access, lead to increased operational and compliance costs, and cause unnecessary increased utilisation of Defence Export Controls ('DEC'). As an example, it is noted that a number of European North Atlantic Treaty Organisation-members and other major non-AUKUS countries issue requests for proposals that exclude goods and services containing International Traffic in Arms Regulations ('ITAR') technology. There is a risk that this exclusionary approach may be extended to included Australian goods and services as a result of the current form of the DTCA. To avoid such adverse and unintended outcomes, EOS proposes the following recommendations.



Principal recommendations

Recommendation 1 (De Minimis): Design and implement a De Minimis Principle in Australia's export control framework, informed by international case studies and Industry engagement.

Recommendation 2 (ITAR Exemption): Allow for an exemption for goods and services that contain ITAR technology, provided they have received an ITAR license.

Recommendation 3 (Grandfathering Provisions): Implement grandfathering provisions in the legislation or regulation to limit disruption to current export contracts and contract negotiations.

Further recommendations

Recommendation 4 (Evaluation and Re-Assessment of Transition Timeframes): Bring forward the first evaluation review to one-year post-transition to ensure a robust consultation review, and recalibrate transition phase timing according to consultation and conditions.

Recommendation 5 (Ensuring DEC is Adequately Resourced): Ensure DEC and other departments and agencies involved in the export permitting assessment process are adequately resourced to manage any increase in permitting applications, so as to preserve assessment timeframes and avoid increases to permitting approval timeframes, as well as undertake continued consultation, outreach, and education activities.

Recommendation 6 (Ensuring Clarity Regarding Information Sharing): Provide greater clarity around the proposed exceptions for information sharing with foreign workers, including broad consultation, as part of the exceptions drafted into the corresponding DTC Regulations.

Recommendation 7 (Ensuring Access to a Skilled Workforce): Ensure Australia has access to a high-skilled workforce, without additional regulatory burdens through further permits.

Recommendation 8 (Adopting the ITAR Release Strategy): Adopt ITAR exemptions concerning basic scientific research that is not directed to specific practical outcomes, including goods and services classified under ITAR as '*Technical Data*' and '*Specially Designed*'.



Recommendation 1: De Minimis

To minimise the unnecessary increased utilisation of DEC and the overregulation of Australia's export controls system, it appears appropriate to implement the often internationally accepted De Minimis Principle (the '**Principle**') into the DTCA through new regulations under the *Defence Trade Controls Act 2012* (Cth) ('**DTC**'). The Principle involves setting a threshold below which goods are not required to have certain licenses. This would assist the Industry in remaining competitive in global markets. Adopting the Principle would also reduce the regulatory burden for the Industry and DEC, with more simplified compliance processes, saving time, cost, and resources, and making Australian products more globally competitive.

United States of America Approach

The Principle is utilised in Part 734 of the Export Administration Regulations ('**EAR**'). Under this part, certain foreign-produced items that incorporate a specific percentage of controlled items of United States origin are not subject to the EAR. The United States has extended the Principle to certain ITAR goods as well.

Switzerland Approach

Switzerland has also adopted the Principle. Under Article 3 of the *Ordinance on the Export, Import and Transit of Dual Use Goods, Specific Military Goods and Strategic Goods* (the '**Ordinance**'), a license is only required to export certain components if, for instance, they make up more than 25 per cent of the value of the overall good into which they are incorporated.

Potential Method by which Australia could adopt the Principle

The Principle could be adopted by the DTC Regulations adjusting the application of the definitions of the terms '*relevant supply*' and '*relevant DSGL services*' as found in the DTCA. Given the nature of Australian supply chains for Industry, EOS recommends that only goods and services that contain 30 per cent or more of Australian-origin components be subject to the DTC.

Recommendation 2: ITAR Exemption

The Industry frequently has to comply with ITAR obligations and seek necessary licenses from the Directorate of Defense Trade Controls in the Bureau of Political-Military Affairs at the US Department of State as well as obtaining licensing approvals from DEC. Requiring the Industry to apply for additional licenses in such circumstances often appears unnecessary. Accordingly, EOS also recommends that goods and services that contain ITAR technology, provided they have received an ITAR license, be exempt from the DTC / DTCA.

Recommendation 3: Grandfathering Provisions

EOS is concerned about the impact of the DTCA on existing arrangements with overseas partners and clients. EOS recommends the introduction of a grandfathering mechanism in the DTC Regulations, to permit ongoing exports under current contractual and export licensing conditions until project completion. EOS also recommends adopting grandfathering provisions that exempt from the DTC tenders the Industry has provided to potential customers since 1 January 2023 and transactions resulting from joint ventures or teaming agreements with suppliers and customers that are in place as at the commencement of the DTCA. EOS notes that similar approaches have been included in other legislation – such as the *Corporations Act 2001* (Cth) by utilising the concept of '*exempt proprietary companies*'. Such provisions will allow the Industry to avoid issues (including potentially critical supply chain interruptions) and provide certainty that current projects will continue to be completed, thereby avoiding any reputational or legal damages.



Recommendation 4: Evaluation and Re-Assessment of Transition Timeframes

Reduced Evaluation Review Timeframe

An effective review and evaluation of the new export controls framework will help to safeguard against the risk of unintended consequences, and remediate any that do develop. The Impact Analysis recommends a review of the legislation three-years after its commencement.

EOS is supportive of this recommendation, but suggests bringing this evaluation forward to be delivered one-year post-transition. A date should be set for the completion of this evaluation as soon as possible to enhance government planning, transparency, and accountability around the review process.

The key items of assessment should include:

- the practical functioning of the new export controls framework and permitting requirements (e.g., processing times and delays);
- the ongoing comparison against the structure and functioning of comparable regimes in the US and UK to identify potential disadvantages for Australian exporters;
- feedback from Australian industry about the framework's impact on market access, costs, competitiveness and workforce;
- feedback from foreign customers on the attractiveness of Australian exports under the new framework; and
- options for further amendments where the framework is assessed as insufficient in meeting its intent and objectives.

This review should include broad consultation with industry, with appropriate timeframes that allow for meaningful input.

Re-Assessment of Transition Timeframe

The Evaluation Review should be used to guide the next phase of the DTCA implementation, taking into account the views of stakeholders and circumstances at the end of the transition period. In particular, should the Evaluation Review indicate that Industry and DEC require more time to adjust to the new conditions, EOS would recommend extending the transition period in line with these conditions.

Recommendation 5: Ensuring DEC is Adequately Resourced

The DTCA's Impact Analysis acknowledges the additional workload that the new provisions would generate for government agencies such as DEC from a permitting perspective, and Customs and the Australian Federal Police from the perspective of enforcement. While the analysis assumes the additional burden to DEC for the new permitting requirements will be offset by the relaxation in requirements for exports to the US and UK markets, this is difficult to quantify until the changes take effect.

There is a risk that any increase to the permitting requirements for non-AUKUS exports, non-AUKUS customers, and information and technology sharing with a workforce that contains non-AUKUS or Foreign Country List ('FCL') citizens or permanent residents will have a flow-on effect to DEC's workload and further increase the length of permit delays, which can be extraordinarily disruptive for the Industry. Delays to permitting assessments increase the operating costs for Australian businesses and reduce the competitiveness of the Industry in international markets. While the intent of the legislation is to increase Australia's competitiveness in US and UK markets — which EOS fully supports — it should not be at the expense of Australia's competitiveness and support to non-AUKUS partners.



All departments and agencies involved in the export permitting assessment and process should be sufficiently resourced to ensure there are no further increases to export approval timelines. Resourcing should take into account appropriate personnel numbers and process efficiencies, particularly through information communication technology and enabled automation.

Recommendation 6: Ensuring Clarity Regarding Information Sharing

Certain technology areas, particularly those under AUKUS Pillar II, are evolving rapidly across the world. Advances in cyber capabilities, artificial intelligence, quantum technologies, undersea capabilities, and hypersonics are not limited to AUKUS countries.

The Australian government should ensure that the new export controls framework has the flexibility, or sufficient exemptions, to allow this technology to continue developing quickly through international collaborations, including with non-AUKUS partners.

Priority should be placed on continuing to foster Australia's technology and R&D partnerships with foreign defence ministries, businesses, academia, and research organisations, both from AUKUS and non-AUKUS countries, to ensure Australia has access to the best-in-breed technology and research from which to build and innovate.

Managing collaboration across these areas can present challenges for export control agencies, and it will be important that they continually modernise in order to keep up with developments in technology and should be skilled and resourced accordingly.

Recommendation 7: Ensuring Access to a Skilled Workforce

Australia's skills crisis is well-known, with the Commonwealth's [Annual Jobs and Skills Report 2023](#) pointing out that the country is facing '*a multifaceted, multi-horizon skills challenge*' that is reminiscent of the 1960s, where low unemployment and sustained employment growth led to a shortage of skilled workers. According to the government's own data, some 266 occupations are in persistent shortage, including those in engineering, information communication technology, and science, as well as technician and trade roles.

For the Industry, a highly skilled and trained workforce is essential, given the nature of the work being carried out. However, the Industry faces challenges in finding, training, and retaining this workforce, due to a shortage of workers available, and competition from other sectors.

There are concerns that the provisions outlined in the DTCA, such as offences for deemed export, will be disruptive to businesses that employ foreign workers and rely on foreign expertise, and will ultimately limit Australia's access to international talent and skills. Any additional workforce restrictions would add to the burden that already exists with regards to recruiting international talent through Australia's complex migration and visa systems and the issuing of security clearances.

Any further administrative requirements, including additional export permit requirements for information sharing with international colleagues, may make it prohibitive in terms of cost and time for some businesses to continue employing highly skilled foreign staff.

EOS is supportive of the government's intent to ensure exceptions to this requirement through the '*regular employee*' exception, where employees are from countries on the FCL. However, further clarity on these exceptions is required, including the definition of '*regular employee*', how the exception will work with contractors and agents, and partnerships with foreign academics and researchers, etc. Additionally, the mechanism for amending or adding to the FCL should be clarified and should be regularly reviewed.



Recommendation 8: Adopting the ITAR Release Strategy

An important outcome of the DTCA will be the maintenance or acceleration of innovation in a more secure technology sharing environment. A key aspect of this will be ensuring restrictions on sensitive products do not extend to basic scientific research, that is the experimental or theoretical work undertaken principally to acquire new knowledge relating to fundamental principles, rather than pursuing specific practical aims or objectives.

ITAR already makes allowances for this type of fundamental research, specifically, under ITAR section [§120.33\(b\)](#) and [§120.41\(2\)](#):

- Information that would otherwise constitute '*Technical Data*' is exempt from ITAR if, for example, it concerns:
 - general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities; or
 - basic marketing information on function or purpose or general system descriptions of defence articles.
- Information that would otherwise constitute '*Specially Designed*' is exempt from ITAR if, for example, it concerns:
 - fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washers, spacers, insulators, grommets, bushings, springs, wires, or solders.

EOS recommends adopting ITAR's approach, and considering appropriate areas for extending the definition to accelerate innovation without compromising controls over sensitive information.



Conclusions and Moving Forward

EOS supports the intent of the proposed legislation in both enhancing Australia's national security and technology transfer safeguards, as well as minimising the regulatory burden for Australian companies looking to export to AUKUS partners.

However, EOS holds concerns that more onerous permitting requirements for non-AUKUS export opportunities may have significant implications for the Industry, specifically around the increasing complexity of compliance requirements, increasing administrative costs of doing business, and the impact of permitting delays to its overall international competitiveness. In looking to ease transactions with the UK and US, there is a risk that trade with non-AUKUS partners will be jeopardised.

Additionally, the proposed amendments are unclear about how the new framework will impact supply chain integration for Australian exporters with non-AUKUS suppliers. EOS is concerned that this may necessitate the sourcing of new suppliers for its business and other Industry participants.

Due to the aforementioned concerns and risks to the Industry, EOS recommends additional consultation be undertaken with the Industry, beyond the brief periods that have been provided, to ensure that the DTCA, while supporting AUKUS, does not inadvertently undermine or otherwise compromise the Industry, and that the aforementioned recommendations be adopted.

Once again, EOS would like to thank the committee for this opportunity to provide its views on the proposed amendments and thank them for their efforts in reviewing the legislation.



About EOS

EOS has been at the forefront of technical innovation in defence and space for over three decades and has grown to become one of the largest Australian defence and space technology exporters.

The business was founded in 1983 and publicly listed on the ASX in 2002. EOS' global headquarters are in Canberra, and it operates offices and sites in New South Wales, Victoria, Queensland, Western Australia, New Zealand, the US, the UAE, Singapore, and Germany.

EOS products are manufactured using Australian-owned and developed intellectual property. It sources more than 83 per cent of the parts and 72 per cent of the value of every product from an Australian supply chain comprising approximately 146 local small and medium enterprises.

The EOS Group operates in two sectors:

- **EOS Defence Systems** specialises in technology for weapon systems optimisation and integration, as well as intelligence, surveillance and reconnaissance for land warfare. Its key products are remote weapon systems, and counter-unmanned aerial system products.
- **EOS Space Systems** includes all EOS space and communications businesses and operates as two entities — EM Solutions and Space Technologies. EM Solutions provides global satellite communications services and systems. Space Technologies specialises in applying EOS-developed optical sensors to detect, track, classify and characterise objects in space and remains integral to research and development across the group.

The two business units share a close interrelationship. One of EOS' market advantages is the accuracy of its kinetic and directed energy weapon systems — technology that was born from EOS' space capabilities.



Abbreviations and Definitions

AUKUS	The trilateral security partnership between Australia, the UK, and the US
DEC	Defence Export Controls
DSGL	Defence and Strategic Goods List
DTC	<i>Defence Trade Controls Act 2012 (Cth)</i>
DTCA	<i>Defence Trade Controls Amendment Bill 2023 (Cth)</i>
DTC Regulations	Defence Trade Controls Regulations
EAR	Export Administration Regulations
EOS	Electro Optic Systems Holdings Limited
FCL	Foreign Country List
ITAR	International Traffic in Arms Regulations
Industry	Refers to Australia's exporting domestic defence industry
Ordinance	Ordinance on the Export, Import and Transit of Dual Use Goods, Specific Military Goods and Strategic Goods
Principle	De Minimis Principle