

S3B responses to on-notice questions

Due: COB Tuesday 5th March

Senator Fawcett:

- 1. Are there any definitions within the proposed amendments that you think could be clarified to make the burden of uncertainty less for participants in your sector?**

Our stakeholders would benefit from further clarity and definition of the terms listed below at the time of the passing of the bill, to be aware of any impacts to their plans or operations. These definitions will preferably be included in the legislation text rather than regulations after the fact, so that further changes will be properly scrutinised and executed with careful consideration.

Fundamental research. This definition needs to be clear and unambiguous, so that R&D can proceed without concern for prosecution and to avoid organisations self-censoring their innovation due to lack of clarity. As we mentioned during the hearing, we are comfortable with the University sector defining this aspect as it impacts that sector directly.

Impact on dual-citizens. For individuals that have both Australian citizenship and citizenship from another country, the effects of the legislation changes need to be made clear. We feel that to obtain Australian citizenship, an individual will have already been scrutinised by several processes to determine that they are not adding risk to our national security and hence should be exempt from further concern.

International students as exceptions. Limiting the scope of international students' research and education will have a significant impact on our sector. A large percentage of students taking relevant degree programs, some of whom bring existing sector experience, are from countries not on the FCL. Research students and student interns have a large impact on innovation for companies in our sector. More detail is given in point three below.

Liability. The current propositions include absolute liability offences, meaning that honest mistakes or inadequate controls can lead to serious consequences. We feel this will lead to self-censorship in R&D and innovation and to organisations choosing to move their R&D offshore or to not consider Australia as a destination for innovation.

Clarity on exceptions. Our members have noted situations that could form part of the list of exceptions. We suggest exceptions are included as part of the legislation. The list provided by the Department of Defence as a submission to this inquiry provides the level of detail and clarity that would be beneficial to include in the legislation.

- 2. We suggest the foreign country list be reviewed, with input from industry bodies, to consider countries that have a significant impact on our sector. Given the intent of this is to align our system with the US, the US system has both ITAR and EAR, and across that they also apply the de minimis principle. Is that something that you think would assist your sector and could you give some examples as to how it would assist and how it could be implemented?**

Applying the same practices as the US would benefit our sector. We are concerned with the extension of the legislation to cover part two of the DSGL and the associated impact on corporations developing dual-use technologies.

Whereas with current legislation, the primary focus for any company developing technology that may be governed by the DSGL has been in relation to exporting across Australia's border. The proposed changes impact companies that may be doing business solely within Australia who will now need to undertake a process to obtain necessary permits. Furthermore, the re-supply of technology once exported from Australia is an area of control that we feel many SMEs will not be resourced to handle.

Suggested improvements that could benefit our sector are provided in answer to subsequent questions.

3. In terms of foreign nationals, what exposure does your sector have to foreign nationals, either in research or manufacture onshore or in collaborations offshore, and how can we manage to achieve the security outcomes we need?

We surveyed our members after the hearing and with short notice had responses from ten companies.

Those ten companies reported a total of approximately 290 staff in Australia. Of the figures reported approximately 28% of their domestic workforce are from countries not on the foreign countries list. Some companies are more exposed to workforce not on FCL than others, with the percentage reaching as high as 40% in one case. It is not clear how many of these individuals hold dual citizenship. Of the 10 companies, 5 reported having staff who are Chinese or Taiwanese nationals. One declined to comment. The companies reported Chinese and Taiwanese nationals made up between 5-10% of their workforce. Other countries that were listed as areas of concern in terms of impact to their staff included India, Philippines, Pakistan, Ukraine, Egypt, and Turkey.

In several cases companies noted PhD students and student interns in their staff counts. As indicated in our initial feedback submission dated 17th November (and to clarify Dr Court's response to Senator Shoebridge regarding impact) one company reported 75% of their student interns are from countries not on the FCL.

Half of the responding companies indicated they were unsure if the DSGL applies to their projects.

4. How can we manage exemptions and exclusions in a way that makes your work viable but still achieves the intent to a level that's comparable with the US in this sector?

The inclusion of de minimis rules within the legislation would benefit our sector while not adversely affecting the security concerns being addressed. Semiconductor technology is often an enabling technology that is incorporated into larger systems before becoming a product that can be used by industry and the broader community. Hence the primary technology itself may not be a risk or concern on its own, rather it becomes more of a concern how the technology is used in subsequent integrations. The broad reach of the DSGL will cover areas of technical development that may have unexpected uses in the future and hence organisations developing those technologies should not be held liable for uses that they could not foresee at the time of development.

There are sure to be projects currently underway that will be impacted by new legislation, which could lead to delays, extra costs, termination of employees or cancelling of such projects. By allowing a grandfathering period or an exception for existing projects beyond a certain stage of development,

these projects will be able to continue and there will be limited impact on existing businesses and individuals.

Similarly, including a provision to sunset certain projects would be beneficial. Once a project has started and has followed all the necessary processes and obtained any permits, after a period the project could be reviewed to confirm there has been no effect on national security and there is no expectation of that changing in the future, leading to an exception on future developments and continued scrutiny.

Educational resources, online tools, and accessible consultation with Department of Defence will be critical to the successful implementation of any changes. Given the harsh legal penalties, organisations will need a high level of confidence that they are adhering to the guidelines and obtaining the necessary permits. This will need to be covered in a timely manner, as answers to questions can affect the initiation of projects, decisions around where to place R&D and innovation and new and ongoing funding for projects.

We suggest extensive reviews with industry bodies such as S3B on any impacts of legislative changes, identifying potential unintended consequences and suggesting changes to improve the outcomes.

Senator Shoebridge:

- 1. What about graduates from and people with experience from China? What proportion of the workforce is that? Could you take on notice the extent to which that's an important part of the workforce as it's currently structured, and how much tighter restrictions there might impact upon the sector?**

Our survey is summarised in answer to Senator Fawcett's question number three above.