



1 September 2023

To: The Secretary
Defence Capability Assurance and Oversight Bill 2023 Legislation Review
Foreign Affairs, Defence and Trade Committee

Dear Secretary,

RE: Submission to the Defence Capability Assurance and Oversight Bill 2023 Legislation Review

Nova Systems is pleased to provide the attached submission to the current Committee inquiry examining the potential for a legislative approach to the provision of independent assurance capability for the Department of Defence.

Nova Systems is strongly supportive of the bringing into being of stronger means by which Test and Evaluation can be made available to Defence, at all stages of the capability lifecycle. A key thrust in the attached submission is the need for T&E to be seen as applying not only as part of acquisition and sustainment, but also as a fundamental enabler of warfighter operations. This integrated approach is fully consistent with the emphasis of the recently released Defence Strategic Review 2023 on a Focussed Force and an Integrated Force.

The attached submission is structured to first discuss the requirements for enhanced Test and Evaluation for Defence, then discuss the credentials of Nova Systems to place context around our perspective, then present a detailed examination of specific provisions of Parts 1 and 2 of the Bill as introduced.

This submission makes a total of 24 recommendations intended to enhance the Bill, and to support Committee thinking on optimised arrangements for Defence Test and Evaluation as an Enterprise.

As an Australian company, Nova Systems thanks the Committee for its detailed consideration of the Bill as introduced, and the deeper issues of how to assure Australian Defence Force capabilities at all stages of lifecycle as a fundamental enabler of National Security.

Nova Systems also thanks the Committee in advance for its accepting of this submission, which we acknowledge as being provided post the official closing dates for input.

Nova Systems is happy to provide further insights into each of the recommendations made within this submission as and when the Committee may require.

Nova Systems approves the publication of this submission by the Committee on its website.

Kind Regards,

Peter La Franchi
Executive General Manager – Future Business

The smarts behind the solution.



Inquiry into the Defence Capability Assurance and Oversight Bill 2023

Nova Systems submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee

1 September 2023

Acknowledgment of Country

Nova Systems respectfully acknowledges the Traditional Custodians of the land and waters in which we live and work and we pay our respects to Elders past, present and future. Nova Systems also acknowledges the services of the Aboriginal and Torres Strait Islander men and women who have contributed to defending Australia and its national interests.



Painting by Kiya Watt commissioned by Nova Systems.

Kiya is a Menang/Gnudju Noongar woman. Noongar nation is the south western region of Western Australia and is made up of 14 different language and tribe groups, Mengang and Gnudju being two of them.

This painting represents the story of connection and partnership. We all work together to be strong. The animals, lands and ocean all have journeys and through connection and coming together our stories are made.



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1. Executive Summary

The Defence Strategic Review released on 24 April 2023 highlighted the strategic importance of relevant and timely acquisition of increasingly sophisticated capabilities for the Australian Defence Force (ADF) to meet the Nation's security needs, given the rapid evolution of new threats in the Indo-Pacific region and reduced warning time for conflict. This requires a rigorous Test and Evaluation (T&E) process that will provide assurance that complex defence materiel will be available for use when required, and is safe, reliable and fit-for-purpose.

Defence has struggled to effectively, objectively and consistently incorporate T&E into decision making across the capability lifecycle caused by difficulties in maintaining an experienced T&E workforce, poor coordination between Defence T&E stakeholders, poor investment in T&E infrastructure, and lack of accountability in the consistent use of T&E to identify and manage risk. The Defence Capability and Assurance Oversight Bill 2023 seeks to rectify these systemic deficiencies in Defence's ability to assess complex risks associated with materiel procurement and sustainment.

As a provider of T&E services to Defence for over 20 years, Nova Systems shares the Commonwealth's vision for an enhanced national approach to build and resource a more resilient sovereign T&E capability, and our submission includes a detailed analysis of Parts 1 and 2 of the Defence Capability Assurance and Oversight Bill 2023 (see Appendix A).

An opportunity exists to better collaborate with industry to build and resource a more resilient sovereign T&E capability. An operationally focussed enterprise partnership between Nova Systems and the Commonwealth would:

- **develop a resilient and enduring T&E workforce** that addresses the need for a T&E workforce with the depth, capability and competence to meet T&E demands now and in the future, and the meet the challenges posed by the short supply of engineering, technology and project management skills in Australia.
- **deliver contemporary sovereign T&E capability** that uses synthetic methods and model based systems engineering practices to optimise T&E efficiency and effectiveness, and steward collaboration across Defence, industry and academia to develop sovereign and enduring T&E capability.
- **provide integrated facilities and range infrastructure** to build national T&E facilities' capability, capacity, and resilience.
- **implement a T&E command support system** to manage T&E resources, including the T&E workforce and the physical and synthetic environments in which T&E is conducted, to ensure availability and readiness of T&E resources for T&E programs.
- **provide stewardship of the sovereign T&E supply chain** to ensure security of supply and maximisation of opportunities for Australian industry.

For T&E to have a positive impact on capability outcomes, we support a T&E function that is empowered to provide expert opinions, advice and recommendations on risk assessments made as a result of legitimate T&E activities.

2. Defence T&E Challenges

The Defence Strategic Review released on 24 April 2023 (DSR23) highlighted the strategic importance of relevant and timely acquisition of increasingly sophisticated capabilities for the ADF, given the rapid evolution of new threats within the Indo-Pacific region and short warning times in the coming period. The types of capabilities required can only be provided by complex systems-of-systems seamlessly integrated into a joint force.

Whilst DSR23 emphasises the need to minimise tailoring and adaptation of specific capabilities, it also acknowledges the need for incremental upgrades and the importance of interoperability as a feature of the Enhanced Force-in-Being to address current strategic circumstances. This combination of upgrade and interoperability will require test, evaluation, verification and certification, with DSR23 calling for this to be carried out by independent and trusted advisers.

The Explanatory Memorandum to the Defence Capability Assurance and Oversight Bill 2023 (Explanatory Memorandum) aligns with the DSR23 recommendations, outlining a fundamental need for effective assessment and articulation of risks relating to procurement and sustainment of complex defence materiel via a rigorous T&E process, providing assurance to decision makers that a platform or system is safe, reliable and fit-for-purpose.

To enable delivery of defence capability relevant to meet the speed of the threat identified in DSR23, the ADF needs a more efficient and agile acquisition process, incorporating streamlined, risk-based and accountable decision making.

Current Deficiencies in Defence T&E

The Explanatory Memorandum observes that despite extensive T&E policy and process, Defence has struggled to effectively, objectively and consistently incorporate T&E into decision making across the capability lifecycle, caused by:

- difficulties in creating and sustaining a stable and experienced T&E workforce
- lag and surge of experience in projects making it difficult to apply effective T&E early in the capability life cycle
- poor coordination between the various stakeholders in Defence T&E, including industry
- poor investment in T&E infrastructure
- lack of accountability to ensure that Defence consistently uses T&E effectively to identify and manage risk.

As a nation, we can't be a "smart buyer" if we are unable to determine whether the capabilities we develop or acquire meet our stated needs. We also need to meet the war fighter's operational needs by delivering capability on time. Defence T&E must be sufficiently robust to deliver what is required, when it's required.

Nova Systems' detailed analysis of Parts 1 and 2 of the Defence Capability Assurance and Oversight Bill 2023 is presented at Appendix A, providing our insights on the measures proposed to rectify current deficiencies in Defence T&E, and recommendations on potential and prospective improvements to the establishment and operation of the proposed Defence Capability Assurance Agency (DCAA).

An opportunity exists for Defence to collaborate with industry to deliver a dynamic joint T&E workforce solution, grow contemporary sovereign T&E capability, build national T&E facilities' capability, capacity and resilience, and implement a framework which ensures effective capability acquisition risk management through the dynamic and efficient application of T&E.

T&E Workforce Depth, Capability and Competence

A deteriorating strategic environment is driving the need for a T&E workforce with the depth, capability and competence to meet T&E demands now and in the future, and in particular be capable of facilitating the delivery of increasingly sophisticated capabilities. Australia is also embarking on the largest modernisation and recapitalisation of the ADF since World War II, and the defence industry workforce will need to grow by 10–20% over the next five years to deliver on Defence's Integrated Investment Program.

There are a number of T&E workforce challenges that need to be addressed to ensure that Defence has the T&E workforce with the expertise to meet these demands.

The Commonwealth and industry need to urgently explore opportunities to partner to develop a resilient and enduring joint T&E workforce solution, rather than duplicate each other's workforces or compete for limited resources.

Engineering, technology and project management skills are in short supply in most parts of Australia, with the defence sector competing with adjacent industries such as construction, infrastructure and technology for the core skills it requires. Compounding this issue is the routine ADF posting cycle that erodes the T&E knowledge base within acquisition projects, as well as creating a training overhead for personnel replacements.

Contemporary Sovereign T&E Capability

Australia faces an environment characterised by increasing strategic competition and more capable military systems enabled by technological change. Rapid advances in technology have seen an increase in capabilities and networked systems that deliver effects across the warfighting domains. Digital engineering tools and methods, including the use of modelling, simulation, and digital twins, are becoming firmly entrenched in the T&E and certification of increasingly complex and sophisticated Australian military equipment needed to respond to, and interact with, more capable military systems.

Whilst the traditional approach of conducting a T&E program by relying on data collected from testing performed on live mission and support systems remains relevant, delivering systems engineering and T&E using synthetic methods is becoming increasingly important, and complements the speed to capability approach set out in DSR23.

Facilities and Infrastructure

The DSR23 focuses on Australia's northern network of bases as a priority for urgent and comprehensive remediation, and therefore a focus for Defence infrastructure spending. Greater utilisation of industry support services for redevelopment and coordination of range infrastructure will enable Defence to posture for protection of Australia's northern maritime approaches while simultaneously building national T&E facilities' capability, capacity, and resilience.

Strong management of the national Defence T&E ecosystem's facilities and infrastructure is a critical dimension of how a potential industry enterprise partnership will provide the ADF with enduring capability advantage. The importance of this position is further strengthened by the allocation of Defence Training and Test Environment as a bespoke line of effort in the 2021 Defence T&E Strategy. In addition, the T&E Certification and Systems Assurance (T&ECSA) Sovereign Industrial Capability Priority Industry Plan explicitly identifies that access to existing facilities, and industry willingness to invest in future facilities, are key risks to the capacity of domestic defence industry to meet operational ADF requirements.

Industry provision of integrated ranges, facilities, and services to expand the existing Australian military test range infrastructure is an example of how a potential industry enterprise partnership will provide the ADF with enduring capability advantage.

Command Support

The 2021 Defence T&E Strategy recognises the need for Defence to better coordinate and manage its T&E resources and workforce, and engage across Government, industry, and academia to build a more resilient sovereign T&E capability. There is a need for a strategic, centralised coordination function for Defence T&E, which will support the management of T&E resources, including the physical and synthetic environments in which T&E is conducted, and the T&E workforce, and will inform priorities for investment and development.

An opportunity exists for Defence to collaborate with an enterprise partner to develop and implement a T&E command support system to systematically capture operational data and transform it into guidance on availability and readiness of T&E resources for T&E programs.

Influence, Transparency and Accountability

The Explanatory Memorandum notes that various barriers exist which affect whether decision-makers actually consider risk assessments made as a result of legitimate T&E activities. For T&E to deliver effective risk assessment outcomes, Nova Systems agrees that Defence must engage in and resource a T&E process which is applied consistently, and the subsequent reporting of identified risks and responses by decision makers must be transparent to project stakeholders.

We support a T&E function which is empowered to provide expert opinions, advice, and recommendations regarding acquisition risks directly to decision makers for Defence capabilities, at a time in the capability lifecycle which allows those opinions, advice, and recommendations to have a positive influence on capability outcomes.

Opportunity for an Industry Partnership

The 2021 Defence T&E Strategy recognises the opportunity represented by a rejuvenated approach to management, resourcing, and enhancement of T&E as an important enabling element of national security capability, and identifies a requirement for Defence to better coordinate with industry to build and resource a more resilient sovereign T&E capability.

Nova Systems fully supports an enhanced Defence T&E governance and standardisation framework to ensure that T&E workforce and infrastructure are continuously fit-for-purpose, and T&E outcomes are relevant and applicable to contemporary Defence capability acquisition projects.

Recognising the continued evolution of ADF capability and the current global security threats and challenges for our nation, Government, Defence and industry must collaborate to build and deliver an absolute, evolutionary, and enduring Defence T&E capability right here in Australia.

We believe an enhanced national approach to delivering Defence T&E through an operationally focussed enterprise partnership between Nova Systems and the Commonwealth, incorporating the national T&E industry, would serve to rapidly advance sovereign T&E capacity and capability to meet Defence T&E needs to a future state beyond the horizons of the current Defence T&E Strategy.

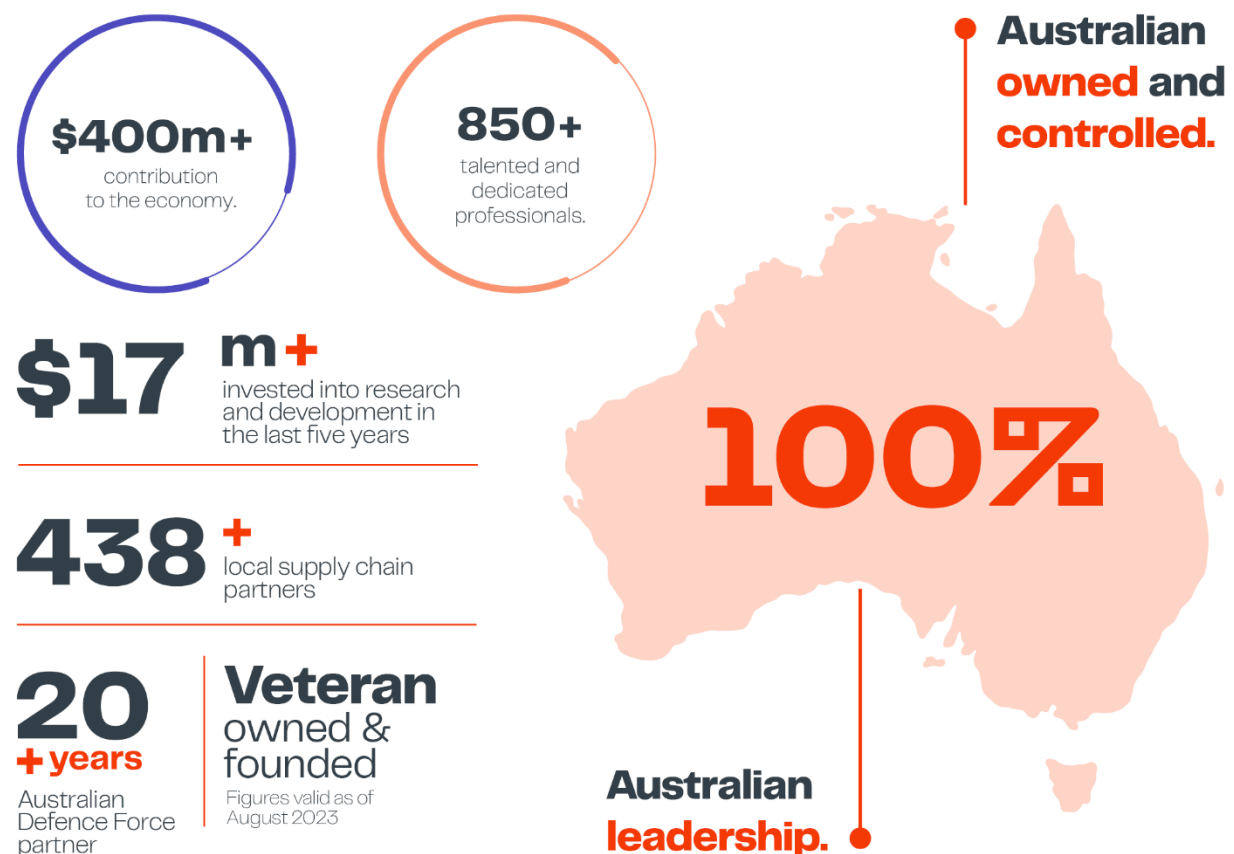
A satellite image of Australia, showing the continent's outline and internal landmasses in shades of blue and white, set against a dark background of space.

Nova Systems has made, and will continue to make, significant investment in building an integrated, contemporary sovereign T&E capability in Australia, for Australia.

3. Nova Systems: Sovereign T&E Provider

Nova Systems has been providing T&E practitioner, management services and subject matter expertise to Defence for more than 20 years, continuously contributing to every major Defence project of strategic significance since 2001, and we continue to provide critical T&ECSA services across all five operating domains and the whole capability lifecycle of multiple ADF platforms and systems.

Proudly sovereign, we re-invest directly into the Australian economy to support ongoing development of Australian industry T&E capabilities, with more than \$17 million invested in the last five years into research and development directly linked to Defence needs, and we will continue to make significant investment in building an integrated and contemporary sovereign T&E capability in Australia, for Australia.



Enterprise Partnership: Commonwealth and Nova Systems

We believe that an enhanced national approach to delivering Defence T&E, through an operationally focussed enterprise partnership between Nova Systems and the Commonwealth would link our proven heritage with the required next-generation technology solutions and service models to meet Defence T&E needs to 2030 and beyond.

Resilient and Enduring T&E Workforce

Nova Systems has an active plan to build the workforce needed to deliver all facets of Defence's T&E requirements on an enduring basis.

We have invested \$18.5 million in professional development programs for our workforce over the last decade, and as the preeminent T&E training provider for Defence and industry, we have trained more than 2,700 Australian technical professionals in T&E of complex systems and model based systems engineering.

Technology Enabled T&E

In the last five years Nova Systems has invested \$17 million in developing new T&E capabilities such as modelling and simulation, and synthetic environments. This investment includes a proprietary T&E digital toolset which supports our T&E delivery and integrates with our broader digital toolset. This toolset resides in the Nova Systems' Digital Engineering Virtual Environment which provides our workforce with remote access to sophisticated digital engineering tools.

We have also established an Australian-first T&E Centre of Excellence, creating an industrial ecosystem for an integrated joint T&E capability that will enable the acceleration of emerging technologies and ensure the long-term sustainability of the Australian T&E workforce.

An Australian initiative, T&E Centre of Excellence

An Australian Initiative, T&E Centre of Excellence to Support Integrated Joint-Force T&E and Capability Assurance

Nova Systems has invested an initial \$2M to establish an Australian-first Test and Evaluation (T&E) Centre of Excellence – a central hub supporting sovereign defence capability and cutting-edge research, digital technologies, training and ideas.

The T&E Centre of Excellence will bring together the Australian Defence Force (ADF), industry, and academia as a focal point for collaboration to deliver integrated joint-force T&E and capability assurance. This initiative will enable the acceleration of emerging technologies, such as synthetic environments, and the evolution of advanced and contemporary T&E capability.

There is also scope for a technology incubator intended to create a national and international focus on the development of new digital tools and methodologies for capability assurance – “assurance technology” or “Assuretech”.

The T&E Centre of Excellence will deliver world leading T&E capability – resulting in the delivery of safe, fit for purpose defence capability that delivers the best operational outcomes.



Integrated T&E Facilities and Range Infrastructure

Nova Systems is actively implementing a strategy for industry provision of integrated ranges, facilities, and services to expand the existing Australian military test range infrastructure. We propose to offer turnkey solutions to Defence in contemporary T&E and experimentation provided through high-calibre platforms and skilled professionals.

Integration of the National T&E Industry

In an enterprise partnership arrangement, a strong relationship between Nova Systems and our supply chain is vital to achieving a long-term sustainable T&E capability for Australia. As the only Australian owned and operated lead of a Major Service Provider to the Capability Acquisition and Sustainment Group, we have demonstrated our ability to be an effective steward of the sovereign supply chain. With Nova Systems as an enterprise partner, and through a shared focus on maximising opportunities for Australian industry and safeguarding sovereign capability, we can ensure the security of supply, and that the smarts and management of the T&E capability resides in Australia.

1500+

local jobs across Nova Systems and our partners

450+

local supply chain partners

20+

years experience managing supply chains

90%+

of supply chain partners are wholly Australian owned and controlled



4. Summary

The Defence Strategic Review released on 24 April 2023 (DSR23) highlighted the strategic importance of relevant and timely acquisition of increasingly sophisticated capabilities for the ADF to meet the Nation’s rapidly evolving security needs, which can only be provided by complex systems-of-systems seamlessly integrated into a joint force. This requires a rigorous T&E process to support the effective assessment and articulation of risks relating to the procurement and sustainment of complex defence materiel, providing assurance to decision makers that a platform or system is safe, reliable and fit-for-purpose.

The Defence Capability Assurance and Oversight Bill 2023 aligns with the DSR23 recommendations and observes that despite extensive T&E policy and process, there is a need for a fundamental uplift in Defence’s ability to effectively, objectively and consistently incorporate T&E into decision making across the capability lifecycle, with the bill proposing measures to rectify current deficiencies in Defence T&E.

As a provider of T&E services to Defence for over 20 years, we have a vested interest in contributing a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee’s inquiry into the Defence Capability Assurance and Oversight Bill 2023, and have provided a detailed analysis of the bill in our submission.

An opportunity exists to better collaborate with industry to build and resource a more resilient sovereign T&E capability that will deliver a dynamic joint T&E workforce solution, grow contemporary sovereign T&E capability, build national T&E facilities’ capability, capacity and resilience, and implement a framework which ensures effective capability acquisition risk management through the dynamic and efficient application of T&E.

An enhanced national approach to delivering Defence T&E through an operationally focussed enterprise partnership between Nova Systems and the Commonwealth, incorporating the national T&E industry, would serve to rapidly advance contemporary sovereign T&E capacity and capability to meet Defence T&E needs.



Appendices

A. Nova Systems' Analysis of Parts 1 and 2 of the Defence Capability Assurance and Oversight Bill 2023

The following table presents an analysis of Parts 1 and 2 of the Defence Capability and Assurance Oversight Bill 2023, as introduced, with the objective of making recommendations on potential and prospective improvements to the establishment and operation of the proposed Defence Capability Assurance Agency (DCAA).

The analysis and recommendations made are presented in terms of the relevant section of the Bill as introduced, a summary of the relevant provision content, a discussion of that specific content and its implications, and where appropriate, a recommendation on means for its enhancement.

The recommendations made reflect the overarching conceptual framework for the future of Test and Evaluation (T&E) in the Defence context as presented in Part 1, and the application of this in terms of prospective approaches to optimising a future structural approach to Defence T&E as may be achieved by the current Bill, or other means as may be adopted by the Commonwealth.

A key guiding approach taken in the analysis and development of recommendations as presented is to establish a forward approach for Defence T&E capability which advances a mission approach to the challenge ahead of the enterprise as it stands and as well as may exist via this Bill. This approach incorporates recommendations to clarify:

- Objectives and functions
- Powers
- Reporting
- The role and requirements for an industry partner
- The functions of an industry partner
- The means of engagement of an industry partner
- The lifespan of the industry partnership
- The transparency and probity requirements required of an industry partner.

The focus on Parts 1 and 2 of the Bill as introduced is intended to create an effective framework to assist in the optimisation of subsequent parts of the legislation, however this analysis does not extend beyond Part 2. Nova Systems stands ready to address additional parts of the Bill as introduced should this be requested by the Legislative Committee, as well as further elaborate on the analysis and recommendations as made herein.

Draft Legislation Reference	Assessment and Recommendations
<p>Part 1, Section 3, Objectives</p>	<p>The proposed Defence Capability Assurance Agency (DCAA) as presented has the summary objectives of:</p> <ul style="list-style-type: none"> • expediting the “procurement of defence capability” • providing assurance of when weapon systems will be available and effective against emerging threats • enhancing risk assessment and quantification within the Defence procurement process. <p>Whilst these are valid objectives, they emphasise a view of Defence T&E as primarily an attribute of acquisition and sustainment, rather than as being an enabler at all stages of a capability lifecycle, as well as in its operational context as an element of the overarching whole of Australian Defence Force (ADF) capabilities and Coalition capabilities.</p> <p>[Recommendation 1]</p> <p>It is recommended that an additional objective be inserted as per “(d) to provide assurance to ADF operational commanders that defence capability as supplied will, at all stages of lifecycle, meet Service, Joint Force and Coalition interoperability requirements to meet warfighting objectives”.</p> <p>[Recommendation 2]</p> <p>It is further recommended that this comprehensive approach to T&E can be better facilitated if the draft legislation were to encompass clear articulation of the mission of the DCAA, this being a preamble to the presentation of its objectives and subsequent discussion of its relationships and functions.</p>
<p>Part 2, Division 2, Section 10, Establishment</p>	<p>The DCAA concept as proposed in the draft legislation is not a direct replication of the existing Defence Test and Evaluation (T&E) Branch within the Vice Chief of Defence (VCDF) Organisation of the Department of Defence (DoD). It instead proposes an extension of responsibilities and powers into an independent source of technical assurance for Defence and Government. Current structural arrangements for provision of such technical assurance are divided within the Australian Defence Organisation, relying on a network of arrangements involving the Defence Science and Technology Group (DSTG), limited technical means within the individual Services and Joint Capabilities Group (JCG), and contracted capability via the Defence Capability and Sustainment Group (CASG) with coordination via the Defence T&E Branch. Whilst Defence is itself actively working to enhance its organic T&E capabilities via the 2021 Defence T&E Strategy, this does not address structural arrangements. By its establishment, DCAA seeks to facilitate structural change in a manner which also provides independence from Defence.</p> <p>[Recommendation 3]</p> <p>It is recommended that, regardless of whether DCAA proceeds or not, the need for structural enhancement and consolidation of all facets of Defence T&E into a unified organisation is essential to the forward success of current as well as future National Defence Strategy.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section 11, Functions, Part 1</p>	<p>The proposed functions of DCAA as articulated by the draft legislation are to:</p> <ul style="list-style-type: none"> • conduct T&E as part of Defence Materiel Programs • provide recommendations and advice on T&E evaluation, risks assessments and capability assurance • operate as a Regulator • develop T&E workforce and infrastructure • make reports to Government and Defence. <p>Given the DCAA is a separate agency, and noting the earlier discussion on mission and objectives, the following recommendation is made.</p> <p>[Recommendation 4]</p> <p>It is recommended that the proposed Agency functions be amended to include the requirement to develop and sustain an annual Defence T&E strategy as operational guidance for its applied focus on delivery. The inclusion of such a requirement is consistent with the proposed reporting requirements under Sections 16-18 of the draft legislation, in that the combination of strategy and reports provides a means of measuring overall performance against clear goals and objectives.</p> <p>It is likewise noted that the proposed DCAA remit, whilst broad, does not encompass all potential use cases and applications of T&E in support of Defence Materiel in the whole of life context. The whole of life cycle focus addresses design, development, acquisition, introduction into service, sustainment, upgrades and withdrawal from service. Post DSR23, Defence intends to adopt a Minimum Viable Product / Minimum Viability Capability approach to new Materiel, meaning ongoing enhancements and upgrades.</p> <p>[Recommendation 5]</p> <p>It is recommended that Section 11 be modified to replace the term “Defence Materiel Programs” with the term “Defence Materiel Programs on a whole of capability lifecycle basis”. This then aligns more comprehensively with the use of the term “capability lifecycle” as is utilised in Section 11, Functions Part 3 and with the discussion of the same in the Explanatory Memorandum.</p> <p>The whole of lifecycle context in turn requires consideration of how Defence Materiel is a contributor to operational Single Service, Joint, Integrated and Coalition Force capability outcomes. T&E is a fundamental element of Joint and Integrated capability outcomes by assessing and providing assurance of the systems relationships between different technical means which embody Defence Materiel. This operational dimension is missing in the functions of DCAA as proposed by the draft legislation, but is a key ongoing function of the Defence T&E Branch.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section 11, Functions, Part 1 (cont)</p>	<p>[Recommendation 6]</p> <p>It is recommended that the Functions of DCAA, as articulated by the draft legislation, be expanded by the addition of “(x) to conduct test and evaluation as is necessary to assure ADF joint and integrated operations with and between individual Services and Coalition partners”.</p> <p>The responsibility for development of a T&E workforce and infrastructure as proposed raises questions regarding DCAA resourcing and powers with respect to recruitment, training and capacity to acquire, maintain and dispose of relevant T&E infrastructure. As presented there is a clear sense that the legislation assumes these functions will be delivered by other parts of Commonwealth Government on behalf of the DCAA rather than being organic, other than in the context of Part 2, Section 12, Powers, where article 2 authorises the Agency to enter into contracts and agreements. It is noted in this context that T&E infrastructure has historically been acquired by Defence on a project-by-project basis, and resourced in this context, rather than as an integrated, multi-dimensional support capability.</p> <p>[Recommendation 7]</p> <p>It is recommended that additional consideration be given to the questions of workforce and infrastructure development to ensure that if established, DCAA has appropriate resourcing and remit as is consistent with the objective of an independent agency which is oriented and optimised to meet ADF warfighting requirements, and which is assured by legislation.</p>
<p>Part 2, Division 2, Section 11, Functions, Part 2</p>	<p>The proposed DCAA Regulator Assurance function incorporates the development, maintenance and regulation of “appropriate standards” as impact T&E workforce development and T&E infrastructure. The reference to “standards” is ambiguous here, and could reference practices and conditions, that is qualitative dimensions of T&E, or it could reference standards as is policy and regulatory guidance which sets out the parameters of the end state condition and attributes which a given item of Defence Materiel or system is required to demonstrate and be compliant with. For this analysis, it is assumed that the reference to standards are of the later form.</p> <p>[Recommendation 8]</p> <p>It is recommended that a formalised definition of “standard” be incorporated into Part 1, Section 5, Definitions, so as to make this term clear in subsequent legislative interpretation.</p> <p>As an extension to the assessment that the reference is to “standards”, it is further observed that as utilised in the Defence environment, standards represent an exceptionally broad remit involving military, defence and civil reference documents. The capacity of DCAA to develop, maintain and regulate this full spectrum of standards is clearly beyond the scope of organisation and resourcing as appears to be envisaged by the draft legislation.</p> <p>[Recommendation 9]</p> <p>It is recommended that the term “appropriate standards” be replaced with “appropriate Australian Defence T&E standards”, making clear that the reference is to activities that are within the achievable remit of the proposed agency.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section 11, Functions, Part 3</p>	<p>The proposed DCAA Regulator Assurance function incorporates directives with respect to the manner by which it performs its functions, with these presented in the singular context of “a defence materiel program”. Whilst Part 3 directs that DCAA consult with persons involved in “management” of a given program and have regard to “operational imperatives”, the language as presented reiterates the sense of an agency which is focussed on acquisition and sustainment level T&E, rather than an agency which undertakes T&E on a whole of capability lifecycle basis and in the operational context of Service, Joint Force, and, or Coalition warfighting.</p> <p>[Recommendation 10]</p> <p>It is recommended that Part 3 be revised to integrate language and guidance which emphasises a strategic, mission-oriented approach to the performance of T&E as a direct extension of Defence Strategy, this directed via consideration of T&E in the context of the full Defence Materiel capability lifecycle and the continuously-developing operational requirements of the warfighter.</p>
<p>Part 2, Division 2, Section 11, Powers</p>	<p>The proposed DCAA is given “power to do all things necessary or convenient to be done for or in connection with the performance of its functions” represents an exceptionally open remit for a Commonwealth agency. This raises issues of the relationship between the proposed powers and the wider Commonwealth legislative corpus.</p> <p>Example one is that the DCAA would exist in the first instance as an assurance mechanism for defence capability delivery and operational performance once in the hands of the warfighter. Because it works in the Defence domain, the DCAA must be bound by Commonwealth’s comprehensive security framework, with the draft legislation not addressing this issue other than in the context of requiring persons performing duties for DCAA to be security cleared. Such bounding would represent a direct limit on the proposed DCAA powers.</p> <p>Example two is that the activities of the DCAA would require engagement with defence industry, where T&E objectives may require access to commercially sensitive information, including aspects of intellectual property, where the provisions of other Commonwealth and Defence legislation will represent checks and balances against the proposed DCAA remit.</p> <p>[Recommendation 11]</p> <p>It is recommended that the powers of the DCAA as articulated be referenced in the context of, and aligned with, wider Commonwealth legislative frameworks which will impact on its powers on a practical basis. Adoption of this recommendation would provide additional clarity for Defence and the DCAA with reference to the requirements of Division 2, Section 14, Access to Information, Premises and Materiel.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section 16, Providing Reports and Advice to Project Staff and Decision Makers</p>	<p>The proposed DCAA is required to undertake timely and responsive reporting on its findings to Defence capability and Defence Materiel Program officials. This requirement being logical, but the language here again emphasises the acquisition-focussed approach taken by the draft legislation, rather than a whole of lifecycle and operational dimensions of capability where T&E functions as a direct contributor to the ability of the ADF to conduct, Joint, Integrated and Coalition operations.</p> <p>[Recommendation 12]</p> <p>It is recommended that Section 16 (1) be amended to read “As soon as practicable after preparing a report for a risk assessment conducted by the Defence Capability Assurance Agency in relation to a Defence materiel program or an operational capability:”</p> <p>[Recommendation 13]</p> <p>It is recommended that Section 16 (1) (a) incorporate a subpart (iii), this stating that “the persons within the Defence Department and Defence Force who are responsible for Force Design, Force Integration and Joint Operations, and to Individual Service capability planners and managers tasked with operational application.”</p>
<p>Part 2, Division 2, Section 17 (3), Reporting to the Defence Minister and National Security Committee of the Cabinet</p>	<p>The draft legislation would obligate the Secretary of the Department of Defence to ensure that submissions to the National Security Committee (NSC) of Cabinet addressing defence materiel which have been subject to a DCAA risk assessment to include that relevant report.</p> <p>[Recommendation 14]</p> <p>It is recommended that Section 17 (3) be amended to read: The Secretary of the Department of Defence must ensure that if submissions to the National Security Committee of the Cabinet concern matters relating to a defence materiel program or the operational performance of an in-service capability that have been covered in a risk assessment report prepared by the Defence Capability Assurance Agency, the submissions are accompanied by a copy of the full report”. This recommendation is consistent with an approach which recognises the role of T&E as an operational enabler.</p>
<p>Part 2, Division 2, Section 18, Reporting to the Committee</p>	<p>The draft legislation at Section 18 requires reporting by the DCAA to “The Committee”, identification of which requires cross referencing against Part 1, Section 5, Definitions, and to Part 4, to make clear that this refers to the proposed Parliamentary Committee on Defence, as opposed to the existing Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT).</p> <p>[Recommendation 15]</p> <p>It is recommended the title of Part 2, Division 2, Section 18 spell out the specific Committee name in full given clear potential for confusion where the JSCFADT remains in operation in its current form post creation of the Parliamentary Committee on Defence.</p> <p>[Recommendation 16]</p> <p>It is recommended that the language of Part (b) of Section 18, relating to “defence materiel”, be amended to reference “defence materiel program or operational performance of an in-service capability”. This recommendation is consistent with an approach which recognises the role of T&E as an operational enabler.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section X, Annual Report</p>	<p>The draft legislation is silent on the matter of DCAA complying with the obligation of all Commonwealth agencies to produce a public annual report.</p> <p>[Recommendation 17]</p> <p>It is recommended that Part 2, Division 2, be amended to language to the effect that “The Defence Capability Assurance Agency must, by 30 October each year, produce and table in the Parliament an annual report detailing its administrative arrangements, leadership, activities, finances, contracting activities and associated matters as required for the previous fiscal year”. An annual report is a fundamental enabler of transparency and accountability.</p>
<p>Part 2, Division 2, Section 19 (1), Industry Partner</p>	<p>The draft legislation mandates establishment of “written agreement” with an industry partner for the DCAA. This industry partner is to undertake the Defence Capability Assurance Regulator function, facilitate T&E workforce development, and provide specialist expertise to assist planning, conduct or supervise T&E activities as required.</p> <p>The draft legislation stipulates that the Commonwealth “must” appoint an industry partner but does not establish the rationale for that step within the bill language.</p> <p>[Recommendation 18]</p> <p>It is recommended that Section 19 (1) be amended to include language to the effect that “The Defence Capability Assurance Agency requires assured access to resources and expertise to achieve its mission. To ensure availability of such resource and expertise, the Agency must, on behalf of the Commonwealth, enter into...”</p> <p>The terminology “written agreement” is vague and is not consistent with the actual functions of the industry partner as set out further in Section 19. The objective of the entering into a “written agreement” with an industry partner as presented by the Explanatory Memorandum is to facilitate the performance of the DCAR function, provide specialist workforce for the whole of DCAA, support standing up of a Centre of Excellence in T&E to drive best practices and assure quality of DCAA outputs, and support, but not provide training of T&E workforce unless appropriate probity arrangements were established to facilitate this. The broad remit of these functions is directly commercial and will therefore be subject to Commonwealth Procurement Rules, selection processes, determination of value for money, commercial terms, and requirements for contracted deliverables. A “written agreement” does not capture this complexity.</p> <p>[Recommendation 19]</p> <p>It is recommended that the structured mechanism enabling engagement of the industry partner be more clearly articulated as the bill advances to better reflect the broader corpus of extant legislative frameworks and guidance for engagement of commercial services by a Commonwealth agency.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section 19 (1), Industry Partner (cont)</p>	<p>The legislation does not provide timeframes for the period by which the industry partner is to be engaged. The use of the term “must” denotes an arrangement into perpetuity however the Commonwealth Procurement Rules, as updated June 2023, require that where a contractual arrangement does not contain an end date, arrangements must be made to allow for periodic review, particularly in the context of value for money. The nature of the industry partnership as proposed by the draft legislation is clearly intended to ensure availability of scarce resource and expertise on an ongoing basis, whilst from a commercial perspective extended contractual periods are acknowledged as providing stability as well as incentive to co-invest. Examples of long-term Defence T&E arrangements for the Defence Forces of the United States (e.g. MITRE) and the United Kingdom (e.g. QinetiQ) demonstrate contract periods of over a decade are not uncommon. There is also a requirement for Defence T&E to be a source of stability over a period of significant strategic instability.</p> <p>[Recommendation 20]</p> <p>It is recommended that the engagement period for the proposed DCAA strategic partner be for a period of 15 years with reviews occurring at five-year intervals, with this written into the legislation. The articulation of those timeframes within the structure of the Bill is directly consistent with the approach taken to direct use of industry resource as a means of assurance, and reduce risks associated with formation of a long-term partnership for both Defence and industry.</p>
<p>Part 2, Division 2, Section 19 (2), Industry Partner</p>	<p>The draft bill as introduced stipulates that the DCAA can only enter into an agreement with an industry partner which is a “sovereign Australian defence industry company” with this determined by the relevant policies of the Australian Government. “Sovereignty” has been demonstrated to be a liquid concept in Australian Government Defence and industry policy over the past decade. Reliance on a fluid Government policy framework leads to multiple potential interpretations of “sovereign” over the life of the DCAA and any prospective industry partnership.</p> <p>The DCAA as proposed is a mechanism of assurance for development, acquisition, sustainment and operation of warfighting capabilities. Assurance of such capabilities is an enabler of the Defence mission at large, which at core is the protection of the Nation and its interests. “Sovereignty” in the context of the proposed legislation, is a direct enabler of that assurance outcome. “Assurance”, as a T&E function, requires the conduct of objective analysis and assessment free from external influence.</p> <p>The logical construct of “sovereign assurance” which emerges here is one where an industry partner is required to directly support the National interest above all other interests. In such terms, an industry partner can logically only be a wholly Australian-owned and operated entity, registered under Australian corporate law, with no financial shareholdings, dependencies or influence able to be exercised by non-Australian entities or persons. This logical definition of “sovereign” does mean that an Australian-registered subsidiary of an international company or entity would not be able to qualify for the role of DCAA industry partner because of the fact that it is a subsidiary of non-Australian interests in the first instance.</p>

Draft Legislation Reference	Assessment and Recommendations
<p>Part 2, Division 2, Section 19 (2), Industry Partner (cont)</p>	<p>This logical definition of “sovereign” has a further implication, that being that in order to deliver “sovereign assurance”, the industry partner as selected cannot have a function other than to be that industry partner, lest its associated commercial activities conflict with the independence which is essential to the performance of objective T&E, particularly where this is focussed on assurance of Defence capabilities. A clear example of this approach in practice can be seen in the United States, where Mitre Corporation is registered as a not-for-profit organisation which is contracted to operate Federally Funded Research and Development Centres (FFRDCs) on behalf of the United States Government. In the Australian specific context, this analysis strongly points to the need for the sovereign industry partner to the DCAA to be a special purpose entity created expressly to meet its needs.</p> <p>The aggregate of this discussion leads to recommendations 21, 22 and 23.</p> <p>[Recommendation 21]</p> <p>It is recommended that a clear definition of “sovereign” be developed and incorporated into the draft Bill to provide meaning and guidance not only to the form of entity engaged as an industry partner, but also to provide enhanced clarifications as to the role assurance plays as an enabler of the Defence mission.</p> <p>[Recommendation 22]</p> <p>It is recommended that Section 19 of the Bill as introduced include a clear statement of the attributes to be displayed by an entity which meets the definition of “sovereign” as adopted within the legislation.</p> <p>[Recommendation 23]</p> <p>It is recommended that Section 19 of the Bill as introduced include a clear stipulation on the need for the selected DCAA industry partner to at all times demonstrate clear independence and be free of conflicts of interest as a fundamental enabler of its assurance support role.</p> <p>Incorporation of each of these three desirable attributes can be incorporated into the Bill as Sections 19 (2) (a), (b) and (c).</p>
<p>Part 2, Division 2, Section 19 (X), Industry Partner</p>	<p>The role and purpose of the industry partner to the DCAA is unlikely to be able to be fulfilled by the capabilities of an existing single entity, with creation of subcontractor and supply chains an essential feature of meeting Bill objectives. The creation of such second and third tier arrangements will need to reflect the adopted definition of sovereign and be governed by probity and conflict of interest provisions as proposed in the discussion of Section 19 (2). In parallel, the proposed long-term approach for appointment of the industry partner as recommended in the discussion of Section 19 (1) means that any subcontract and supply chains will require ongoing refresh in response to the evolution of the DCAA, the evolution of Defence capabilities, and the evolution of technologies and techniques for T&E.</p> <p>[Recommendation 24]</p> <p>It is recommended that the industry partner as appointed be required to sustain a market testing and supply chain refresh program with this also facilitating continuous means for Australian industry capability outcomes.</p>