



Australian Government

Impact Analysis

Strengthening Australia's Export Control Framework



Acknowledgement of Country

The Department of Defence (Defence) acknowledges the Traditional Custodians of the lands, seas and air in which we live, work and train. We pay our respects to their Elders past and present. We also pay our respects to the Aboriginal and Torres Strait Islander men and women who have contributed to the defence of Australia in times of peace and war.

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Defence acknowledges the contributions of other Australian Government agencies and defence stakeholders across industry, higher education and research sectors in the development of this Impact Analysis and the supporting materials.

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Executive Summary

To realise the full benefits of the AUKUS partnership, the Governments of Australia, the United Kingdom (UK) and the United States (US) are committed to streamlining defence trade among AUKUS partners, including through the creation of an export licence-free environment. This licence-free environment will support industry, higher education and research sectors in all three nations to cooperate with reduced technology transfer barriers and costs of trade.

Australia assesses over 3,000 applications¹ each year to export or supply Defence and Strategic Goods List (DSGL) goods and technology, with around 900 of these related to an export or supply to the UK or US.² In 2022, the total value of export permits assessed by Australia was approximately AUD\$8.75 billion. Of this, the value of export permits to the UK or US assessed was approximately AUD\$5 billion.³

The US currently issues more than 3,800 export control licences, with a value of more than AUD\$11 billion per annum, to support the export of controlled military and dual-use goods and technology to Australia.

The UK currently issues more than 200 export control licences, with a value of more than AUD\$129 million per annum, as well as approves over 1400 Open General Licence registrations to support the export of controlled military and dual-use goods and technology to Australia.

All three governments have also committed to strengthening their collective abilities to protect critical technologies.

A glossary of terms used in this Impact Analysis is included in **Appendix 1**.

Question 1: What is the policy problem you are trying to solve and what data is available?

This Impact Analysis considers two key policy problems:

1. Australia's current export control framework prevents access to a country-based exemption to the licencing requirements of the *US Arms Export Control Act*. This causes delays to accessing critical capabilities, increased regulatory burden and national security

risks and restricts Australian industry growth and collaboration.

2. Gaps in Australia's existing export control legislative provisions enable the transfer of controlled goods and technologies both within and outside of Australia, to foreign entities. These foreign entities' interests and actions may be prejudicial to the security, defence or international relations of Australia.

Defence has used data from the Defence Export Control ICT System, the Australian Border Force (ABF) Integrated Cargo System, the Australian Bureau of Statistics (ABS), the Department of Education, AUKUS partners and publicly available reports and analysis to evaluate these policy problems.

Question 2: What are the objectives, why is government intervention needed to achieve them, and how will success be measured?

The objectives to address the policy problems identified in **Question 1** are:

1. Fast-track the delivery of leading-edge defence capabilities into the hands of our forces more efficiently, maintaining Australia's capability edge;
2. Certification by the US Secretary of State that Australia's export control framework is at least comparable to the US. This will allow Australia to access the country-based exemption proposed by the US Congress for AUKUS partners;
3. Prevent the unwanted proliferation of controlled goods and technology and reduce the risk of entities acquiring controlled goods and technology for uses

1 Applications include Permits, In-Principal Assessments and Export Control Assessments.

2 CAVEAT: These figures do not necessarily equate to actual exports as there is no obligation to conduct an export once a permit or assessment is issued.

3 CAVEAT: Data is from the Defence Export Controls ICT system, and is reliant on input by the applicant at the time of applying for the permit.

not aligned with Australian interests, thereby better protecting Australia's national security; and

4. Limit the regulatory burden on Australian industry, higher education and research sectors to encourage innovation and cooperation at an unprecedented pace. This will provide Australia and our partners with a genuine capability development and innovation edge.

The Australian Government legislates and administers Australia's export control framework. Accordingly, any changes to Australia's export control framework requires intervention from the Australian Government.

Success in meeting the objectives can be measured both qualitatively and quantitatively. Ultimately, success will be measured in the creation of an export licence-free environment among and between AUKUS partners and the prevention of unwanted and unlawful proliferation of controlled goods and technologies that could prejudice Australia's security, defence and international relations.

Question 3: What policy options are you considering?

The Impact Analysis considers three policy options:

Option 1 maintains Australia's existing export control framework.

Option 2A strengthens Australia's export control framework by regulating deemed supplies, re-supplies and the provision of DSGL services through an amendment to the *Defence Trade Controls Act 2012* (DTC Act) with appropriate complementary exceptions as requested by stakeholders during the consultation process of the Impact Analysis. The inclusion of complementary exceptions in this option, including a full country-based exemption for the UK and US, reduces unnecessary compliance burdens faced by industry, higher education and research sectors whilst ensuring the controls adequately address the Australian national security requirements. The AUKUS partners permit/licence-free environment provides a net benefit to the Australian economy.

Option 2B strengthens Australia's export control framework by regulating deemed supplies, re-supplies and the provision of DSGL services through an amendment to the DTC Act without complementary exceptions.

Defence also explored a non-regulatory option with AUKUS partners to address the policy problems and achieve the Australian Government's objectives. This non-regulatory option was found to be unviable.

Question 4: What is the likely net benefit of each option?

The costs and benefits of each option is estimated individually over a 10-year period.

Option 1: While the net impact of **Option 1** to Australia would be nil, it imposes a burden that can be quantified as a current cost to the Australian Government, industry, higher education and research sectors. The quantified costs of **Option 1** would have a net present value of AUD\$706 million on the Australian economy over a 10-year period.

Option 2A: The quantified costs of **Option 2A** would have a net present value of AUD\$93 million on the Australian economy over a 10-year period. This represents a net benefit, discounted to today's dollar, on the Australian economy of AUD\$614 million over a 10-year period when compared to the status quo in **Option 1**.

Option 2B: The quantified costs of **Option 2B** would have a net present value of AUD\$102 million on the Australian economy over a 10-year period. This represents a net benefit, discounted to today's dollar, on the Australian economy of AUD\$605 million over a 10-year period when compared to the status quo in **Option 1**.

Sensitivity analysis is undertaken to test the impact of assumptions used in the main modelling. This is included in detail in **Question 4** of the Impact Analysis.

Question 5: Who did you consult and how did you incorporate their feedback?

From late 2022 through until November 2023, Defence undertook confidential, targeted and public consultation with stakeholders across the government, industry, and higher education and research sectors. This consultation included in-person and online briefings, meetings, and the provision of materials for consideration and comment, including a draft of the Defence Trade Controls Amendment Bill 2023 (DTC Bill) and Explanatory Memorandum. The purpose of consultation was to ensure legislative amendments to the DTC Act were fit for purpose and addressed the policy problem and objectives of the Australian Government. All recommendations received through consultation were considered and were either incorporated into the DTC Bill if in-scope or, based on advice provided by Defence Legal and the Australian Government Solicitor, will be incorporated in the Defence Trade Controls Regulation 2013 (DTC Regulation) or Customs (Prohibited Export) Regulations 1958 (Customs PE Regulations).

Question 6: What is the best option from those you have considered and how will it be implemented?

Option 2A is the recommended option. **Option 2A** has the greatest net benefit, discounted to today's dollar, on the Australian economy of AUD\$614 million over a 10-year period. **Option 2A** also provides the greatest alignment with the policy problems and objectives and was favoured by stakeholders due to the inclusion of exceptions that minimise the regulatory burden on them.

Implementation of **Option 2A** will require Australian Government investment to coordinate efforts across industry, higher education and research sectors, and ongoing collaboration through the AUKUS partnership to ensure effective rollout.

Question 7: How will you evaluate your chosen option against the success metrics?

Option 2A will be evaluated in line with the Commonwealth Evaluation Policy. **Option 2A** will be evaluated three years after the legislative amendments come into effect. The evaluation will include quantitative and qualitative analysis of the legislative amendments and their effectiveness in meeting the policy objectives, including any unintended outcomes.

Development of the Impact Analysis

This Impact Analysis commenced in June 2023, following an announcement by the US Government that it would progress legislation to the US Congress to provide a national exemption from the licencing requirements of the US *Arms Export Control Act* to Australia and the UK.

The process of working through the Impact Analysis provided the Australian Government with a framework to understand the opportunities and consequences of making changes to Australia's export control framework to:

1. Access a national exemption to the licencing requirements of the US *Arms Export Control Act*; and
2. Provide a national exemption to the permit requirements of the Australian DTC Act for DSGI controlled goods and technology exported to the UK and US, supporting the creation of a trilateral AUKUS partners licence-free environment.

Drawing on academic reports, public representation from Australian, UK and US industry and confidential, targeted and public consultations with stakeholders, Defence developed the proposed policy options outlined in this Impact Analysis to meet the stated objectives and address the identified policy problems. This information formed the primary basis for **Questions 1-3** and informed a decision by the Australian Government to commence targeted consultation with industry, higher education and research sectors.

In October 2023, Defence submitted the Impact Analysis for a First Pass Assessment by the Office of Impact Analysis (OIA). The OIA assessed the Impact Analysis as adequate to inform a decision by the Australian

Government to publicly consult draft legislation to enable introduction as early as this year. The OIA provided feedback to Defence to support further development of the Impact Analysis in order to try and achieve a rating of good practice.

On 7 November 2023, Defence released an Exposure Draft DTC Bill and Explanatory Memorandum to deliver policy **Option 2A** for public consultation. Public submissions closed on 17 November 2023. The public consultation supported further development of the Impact Analysis, particularly **Questions 3-7**. The consultation also informed amendments to the DTC Bill and the Explanatory Memorandum for consideration by Parliament.

On 20 November 2023, taking into account the feedback in the First Pass Assessment, further feedback provided by the OIA and feedback provided by key stakeholders across government, industry, and higher education and research sector peak bodies, Defence submitted this Impact Analysis for a Second Pass Assessment by the OIA. This finalised analysis was subsequently used to inform the Australian Government's final decision on whether or not to introduce the DTC Bill into the Australian Parliament.

The Impact Analysis was developed in accordance with the Australian Government Guide to Policy Impact Analysis and the feedback provided by the OIA. Early drafts not assessed by the OIA informed decisions made by the Australian Government to undertake initial targeted consultations. A version of the Impact Analysis subjected to First Pass Final Assessment by the OIA informed decisions of government to release Exposure Draft of the DTC Bill and Explanatory Memorandum for full public consultation.

Background and Context for Strengthening Australia's Export Control Framework

Australia is facing a rapidly evolving geopolitical environment, impacting Australia's defence and security interests. The *Defence Strategic Review 2023*⁴ (DSR) proposes an ambitious reform agenda to Defence's posture and structure that is designed to respond to, and proactively manage, key threats to Australia's national security.

In September 2021, leaders from Australia, the UK and the US announced the creation of the AUKUS trilateral defence and security partnership. Through AUKUS, Australia will acquire conventionally armed nuclear-powered submarines and fast-track the delivery of leading-edge capabilities into the hands of the Australian Defence Force more efficiently. This will maintain and drive a trilateral capability edge. Australia, the UK and the US will enable this through the promotion of deeper information and technology sharing and the deeper integration of security and defence-related science, technology, industrial bases and supply chains.

To fully realise this benefit, AUKUS partners are streamlining their export control regimes to enable collaboration at the speed and scale required to meet these challenging strategic circumstances. This includes the creation of a streamlined export licence-free environment among and between AUKUS partners to support industry, higher education and research sectors in all three nations to cooperate with lower technology transfer barriers and costs of trade.

As part of this effort, the US Congress is considering several legislative proposals to provide Australia and the UK with a national exemption from US export control licencing requirements. This would allow the transfer,

re-transfer and re-export of controlled goods, software and technology among and between Australia, the UK and the US without the need for a US export control licence. Australia's access to this national exemption will require the US Secretary of State to certify to the US Congress that Australia has a comparable export control framework to the US. This is an existing legislated prerequisite in the *US Arms Export Control Act*.

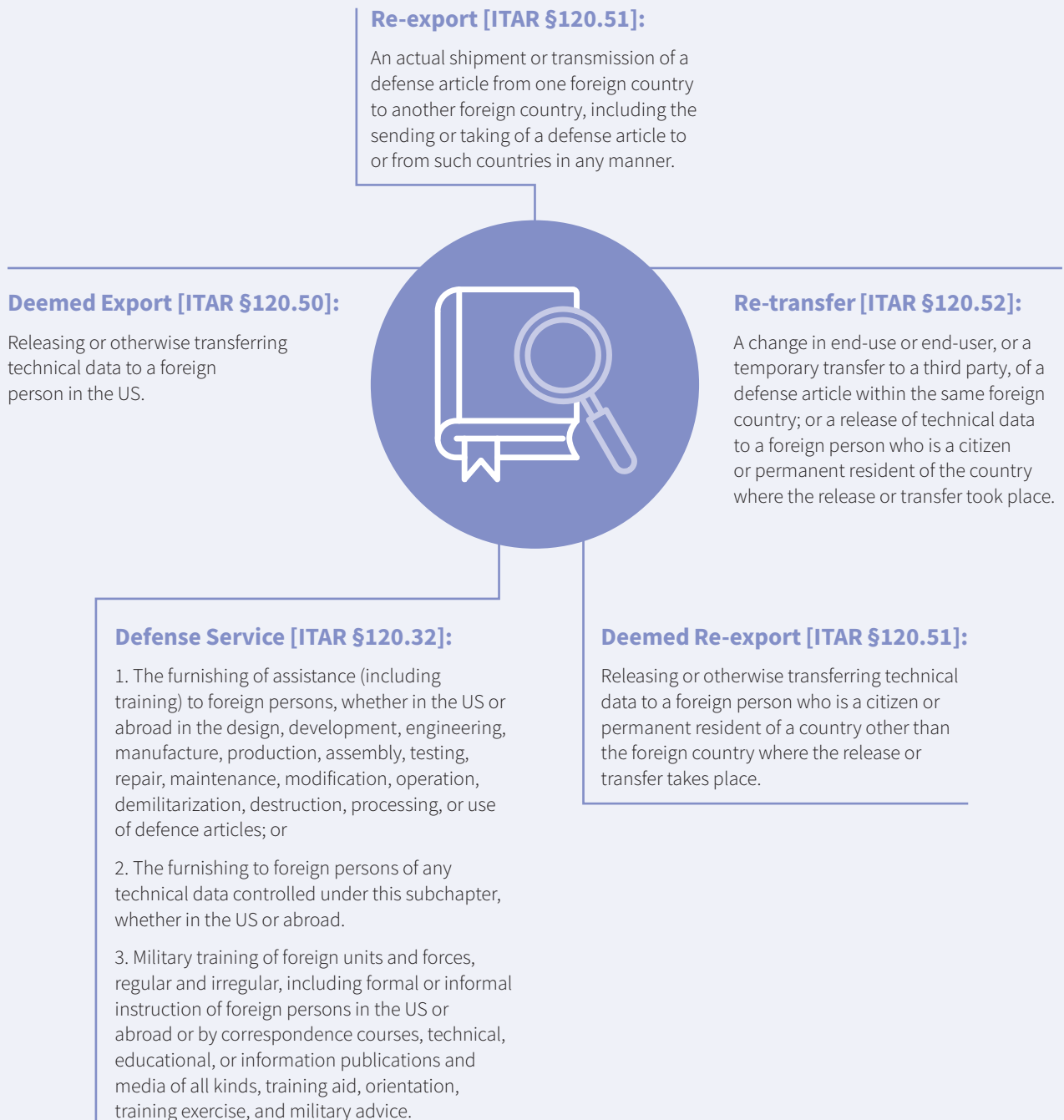
To achieve comparability with the US export control framework, Australia would need to consider amending its export control legislation to regulate what the US terms 'deemed exports', 're-exports', 'deemed re-exports', 're-transfers' and the 'provision of defence services' (see Image 1 for definitions⁵). This would require amendments to Australia's export control framework.

In the Australian context, these terms would be referred to as: 'deemed supply', 're-supply' and the 'provision of DSSL services'.

4 Department of Defence. n.d. 'Defence Strategic Review.' Accessed 13 October 2023, <https://www.defence.gov.au/about/reviews-inquiries/defence-strategic-review>

5 The definitions for 'deemed exports', 're-exports', 'deemed re-exports', 're-transfers', and the 'provision of defence services' are taken from the Title 22 Chapter I Subchapter M Part 120 of the US International Traffic in Arms Regulations.

Image 1: US definitions taken from the International Traffic in Arms Regulations for 'deemed exports', 're-exports', 'deemed re-exports', 're-transfers' and the 'provision of defence services'



Deemed Supply: supplying DSGL technology⁶ to a foreign person within Australia.

Note: in the US export control framework, this is referred to as a 'deemed export'.

Example: An Australian company manufactures missiles for the Australian Defence Force and currently employs, or is seeking to hire, foreign nationals with access to production technologies for various subassemblies – all of which are export controlled on the DSGL.

Re-supply: supplying of DSGL goods and technology, that were previously exported or supplied from Australia, from one foreign country to another foreign country, or to a foreign person within the same foreign country.

Note: in the US export control framework, this is referred to as a 're-export', 're-transfer', and 'deemed re-export'.

Example: An Australian company manufactures and exports a weapons system to a foreign country. This weapons system is controlled on the DSGL. The foreign country provides this weapons system to another nation in their region for use in a military operation on their borders as part of an assistance package.

Example: An Australian company lawfully exports DSGL controlled underwater communications sensors using an export permit issued under existing Australian export control legislation from Australia (Country A) to a corporate headquarters in a foreign country (Country B). An employee from the headquarters in Country B wants to discuss the DSGL technology (blueprints) related to the sensors with a government official from another foreign country (Country C) as part of a sales presentation.

Example: An Australian company lawfully exports DSGL controlled underwater communications sensors with an export permit issued under existing Australian export control legislation from Australia (Country A) to its headquarters in a foreign country (Country B). An employee in the headquarters in country B intends to provide the sensors to a telecommunications company in Country B (i.e. a different end-user) for demonstration and evaluation in an attempt to secure a sale to a different end-user in Country B.

DSGL Services: furnishing of assistance (including training and DSGL technology) to foreign persons, whether in Australia or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing or use of Part 1 DSGL goods or technology.

Note: in the US export control framework, this is referred to as 'defence services'.

Example: An Australian citizen is employed as a consultant providing training courses to Australian Defence Force pilots on defensive flight techniques related to goods, software or technology on Part 1 of the DSGL. They are then offered a job with a firm who provides these same services in a foreign country.

Australia's export control framework is a key element of Australia's protective security environment. It aims to stop military and dual-use goods and technology from being transferred to individuals, states or groups with interests prejudicial to Australia's security, defence or international relations. Every person located in Australia, whether an Australian national or not, is subject to Australia's export control laws. Some export controls also apply to Australian citizens and residents overseas. An overview of Australia's export control framework is provided at **Appendix 2**.

Strengthening Australia's export control framework now would enhance Australia's protective security environment and support passage of key US legislation in the *National Defense Authorization Act* for Fiscal Year 2024, by removing any doubt as to Australia's ability to protect US origin military and dual-use technology. It also ensures that Australia's export control framework is recognised by the US as comparable to its own. This reform is essential to build Australia's long-term national defence resilience, support our AUKUS ambitions and achieve collective deterrence. These changes will ensure we can collaborate at the required speed and scale to meet Australia's challenging strategic circumstances and support our allies. It also presents significant benefits and opportunities for the Australian industry, higher education and research sectors.

⁶ DSGL technology is defined in Section 4 of the DTC Act. It means a thing that is: a) technology, or software, as defined in the DSGL; and b) within the scope of that List.

Complementary Protective Security Environment Reforms Underway by the Australian Government

Reforms to Australia’s export control framework are part of a suite of existing protective measures to minimise unwanted technology transfer and safeguard Australian innovation, strengthen our national security, and bolster economic growth. The key complementary reforms underway include the Defence Amendment (Safeguarding Australia’s Military Secrets) Bill 2023 (SAMS Bill), 2023 Independent Review of the DTC Act, Reforming Defence Legislation, and Critical Technology Visa Screening. These reforms bolster Australia’s protective environment continuum (demonstrated in Image 2), protecting technology and information from threats to Australia’s national interest:

- Prior to the arrival of foreign nationals into Australia and prior to the collaboration of foreign nationals with individuals and entities within Australia;
- Within Australia’s borders and for the duration of collaboration; and
- Before departure of foreign nationals from Australia or prior to controlled technology or information being exported or supplied from Australia.

Together, these reforms provide Australia with a robust protective security framework, which is fit for purpose in the changing strategic environment.

Image 2: Complementary reforms underway to bolster Australia’s protective environment continuum



Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023⁷

In February 2023, the Deputy Prime Minister announced that the Australian Government would develop new laws to protect Australia's military secrets. This announcement followed an examination in late 2022 into Defence's legislation, policies and procedures to prevent and discourage former Australian Defence Force personnel from undertaking employment in support of foreign powers with interests prejudicial to Australia.

On 14 September 2023, the Australian Government introduced the SAMS Bill into Parliament to regulate training provided by any Australian citizen or permanent resident of Australia, which would share sensitive Defence information related to export controlled technologies and military tactics, techniques and procedures with foreign powers.

This legislation partially addresses gaps in Australia's export control framework related to foreign military training.

2023 Independent Review of the Defence Trade Controls Act 2012⁸

Section 74B of the DTC Act requires the Minister for Defence to trigger a review of the DTC Act at intervals of no more than five years.

The Australian Government has appointed Mr Peter Tesch and Professor Graeme Samuel AC to co-lead the 2023 review to consider whether the current controls in the DTC Act are fit for purpose within the context of the whole-of-government regulatory and protective measures for intangible technology transfers.

The review is running concurrently with and complements proposed reforms to Australia's export control framework.

Reforming Defence Legislation⁹

The Australian Government is committed to reforming Defence legislation to ensure Defence is able to meet the challenges of a rapidly changing strategic environment and the realities of modern competition and armed conflict.

Defence is developing policy options to modernise the *Defence Act 1903* and related legislation to enable Defence to be more agile, operationally effective and responsive. Defence legislation provides legal authority for activities critical to the military defence of Australia. It is anticipated the reforms will include amendments to improve Australia's interoperability with key allies and partners.

On 9 March 2023, the Assistant Minister for Defence, the Hon Matt Thistlethwaite MP, called for public submissions in relation to reforming Defence legislation. That public consultation process is now closed.

Critical Technology Visa Screening¹⁰

The Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022 and Migration Amendment (Postgraduate Research in Critical Technology — Student Visa Conditions) Regulations 2022 establish a new visa screening framework to identify and manage the risk of unwanted transfer of Australia's technology in certain temporary and permanent visa programs.

The proposed screening process will strengthen Australia's ability to identify and manage risks associated with the unwanted transfer of critical technologies. Once activated, the framework will be country-agnostic, intelligence-led and will complement existing frameworks put in place by universities and industry, like the measures introduced by the University Foreign Interference Taskforce.

7 Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023 (Cth), (Austl.), <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22legislation%2Fbillhome%2Fr7087%22>

8 More information can be found at: <https://www.defence.gov.au/about/reviews-inquiries/defence-trade-controls-act-2012>

9 More information can be found at: <https://www.defence.gov.au/about/reviews-inquiries/reforming-defence-legislation>

10 More information can be found at: <https://www.homeaffairs.gov.au/about-us/our-portfolios/national-security/critical-technology>





QUESTION 1

What is the policy problem you are trying to solve and what data is available?

Australia's export control framework, a key element of Australia's broader protective security environment, aims to stop military goods and technology (and goods and technology that can be used in chemical, biological and nuclear weapon programs) from being transferred to individuals, states or groups with interests prejudicial to Australia's security, defence or international relations.

Every person and business located in Australia, whether an Australian national or not, benefits from increased peace, security and productivity attributable (in part) to Australia's export control laws. Some export control requirements can also apply directly to Australian citizens and residents, and to a greater extent on certain businesses and industries as well as research institutions - both domestically and overseas.

Defence Export Controls (DEC), within the Department of Defence, is Australia's military and dual-use goods and technology export regulator.¹¹ DEC issues permits and assessments to Australian Government entities, Australian industry, higher education and research entities and any Australian based person seeking to export or supply goods and technology controlled on the DSGL.

DEC assesses over 3,000¹² applications¹³ each year with around 900 of these related to an export to the UK or US as demonstrated in Table 1.

In 2022, the total value of export permits assessed by DEC was approximately AUD\$8.75 billion. Of this, the value of export permits assessed to the UK or US was approximately AUD\$5 billion.¹⁴

Table 1: Total applications assessed by DEC in 2022 including breakdown by AUKUS partner and by stakeholder group.

Total Applications	Total: All Destinations	Total: UK and US
All Stakeholders	3,158	924
Australian Higher Education	67	20
Australian Government	137	32
Foreign Government	7	0
Australian Industry	2947	872

The US Government issues export control licences to US government entities, international government entities, US industry, higher education and research entities, and international industry, higher education and research entities seeking to export goods and technology controlled through the US Munitions List (USML) and Commerce Controlled List (CCL).

The US Government currently issues more than 3,800 export control licences, valued at more than AUD\$11 billion per annum, to support the export of controlled military and dual-use goods and technology to Australia. The US Government advises it takes on average 21 days to obtain a CCL licence and 41 days to obtain an USML licence. However, it is widely reported that US export control licence approval

11 More information can be found at: <https://www.defence.gov.au/business-industry/export/controls/about/defence-export-controls>

12 CAVEAT: The figures do not necessarily equate to an actual export as there is no obligation to conduct an export once a permit or assessment is issued. Department of Defence. n.d. 'Defence Export Controls Our Performance.' Accessed 2 November 2023, <https://www.defence.gov.au/business-industry/export/controls/about/performance>

13 Applications include Permits, In-Principal Assessments and Export Control Assessments.

14 CAVEAT: Data is from the DEC ICT System and is reliant on input by the applicant at the time of applying for the permit.

timeframes can take months and, in some cases, over a year before being approved for export to Australia.¹⁵

The UK Government issues export control licences to UK Government entities, UK industry, higher education and research entities, and any UK based person seeking to export goods and technology on the UK Strategic Export Control Lists (also known as the consolidated list of strategic military and dual-use items that require export authorisation). The UK currently issues more than 200 export control licences, valued at more than AUD\$129 million per annum to support the export of controlled military and dual-use goods and technology to Australia. The UK Government advises it can take in excess of 130 days to provide an export licence approval for Australia, with the majority approved within 60 working days.¹⁶ The UK also approves over 1400 Open General Licence registrations to export goods or technology to Australia.

The non-discriminate, one size fits all approach to export controls by and for AUKUS partners is divorced from the time and strategic imperatives of the rapidly evolving geopolitical environment that impacts on Australia's defence and security interests.

Whilst all three nations rarely refuse an export application to an AUKUS partner, the time taken to grant licences or

permits impacts on innovation, collaboration and speed to delivery, collectively disadvantaging our research and industrial bases from maintaining and increasing our military defence technological advantage.

It is for this reason that all three AUKUS partners have announced a commitment to modernise their defence trade systems while strengthening the collective ability of all three partners to protect critical technologies.

This Impact Analysis considers two key policy problems:

Policy Problem 1

Australia's current export control framework prevents access to a country-based exemption to the licencing requirements of the US *Arms Export Control Act*. This causes delays to accessing critical capabilities, increased regulatory burden and national security risks and restricts Australian industry growth and collaboration.

Policy Problem 2

Gaps in Australia's existing export control legislative provisions enable the transfer of controlled goods and technologies both within and outside of Australia, to foreign entities. These foreign entities' interests and actions may be prejudicial to the security, defence or international relations of Australia.

Policy Problem 1:

Australia's current export control framework prevents access to a country-based exemption to the licencing requirements of the US *Arms Export Control Act*. This causes delays to accessing critical capabilities, increased regulatory burdens and national security risks and restricts Australian industry growth and collaboration.

Barriers to effective technological and industrial cooperation stemming from onerous export controls in the United States

Realising the full potential of AUKUS will not be possible without major changes to the way that AUKUS partners cooperate on defence industrial and technology issues. The current US export control legislation, regulation and policies disincentivises Australian industry from establishing trilateral and bilateral collaborations. This

undermines the ability of AUKUS partners to build, operate and maintain adequate numbers of existing defence systems and platforms, let alone develop new ones via unrestricted and genuine collaboration.

There is widespread agreement by the Australian Government, the US Government, key members of US Congress, the UK Government, peak industry bodies, analysts and policymakers that the current export control

15 William Greenwalt and Thomas Corben. 16 May 2023. 'Breaking the Barriers.' United States Studies Centre. Accessed 13 October 2023, <https://www.aei.org/research-products/report/breaking-the-barriers-reforming-us-export-controls-to-realize-the-potential-of-aucus/>

16 UK Department for Business and Trade. 30 August 2023. 'Guidance: Strategic export controls: licencing data.' Accessed 10 October 2023, <https://www.gov.uk/guidance/strategic-export-controls-licencing-data>

regimes are hampering effective technological and industrial cooperation between the AUKUS partners.¹⁷

The US International Traffic in Arms Regulations (ITAR) restricts the transfer of controlled defence articles and services listed on the USML to non-US persons. To comply with the ITAR, companies, including the Australian Government and Australian entities based in Australia, must obtain licences or other authorisations from the US Department of State prior to exporting, re-exporting or re-transferring controlled articles or services.

This process is overly complex and onerous. In combination with the significant legal and financial consequences of violating the ITAR, the restrictions can hinder legitimate cooperation efforts.¹⁸ Furthermore, when Australian entities wish to transfer, export or supply goods subject to US export controls either within or from Australia, they require a licence from both the US Department of State as well as a permit from Defence.

There are **six specific barriers** to effective technological and industrial cooperation stemming from onerous US export controls. These six key barriers continue to adversely impact Australian entities and undermine legitimate technology transfer and information sharing.

These barriers are:

1. The regulatory burden and associated costs incurred by Australian entities, including from: associated application and processing times; fees and charges; and ongoing compliance costs for ITAR and US Export Administration Regulations (EAR) processes;
2. The regulatory burden due to the extraterritorial applicability of US export controls and the requirement for re-export, re-transfer, deemed export and deemed re-export licences from the US Department of State;
3. Lower supply chain diversity as 'ITAR taint'¹⁹ is avoided by Australian entities, and US entities are able to tender with less regulatory burden for US procurement as they do not require licences;
4. Reluctance to share technology and information from the US to Australia and from Australia to the US due to ITAR or EAR controls, undermining collaboration and development;
5. The disincentives for Australian entities or governments to work with the US Department of

Defense on niche advanced technologies due to a fear of losing control over their intellectual property; and

6. The financial and human capital costs of both complying with or unintentionally breaching the ITAR regime.

Based on the legislation before the US Congress, Australia will not be able to access a country-based exemption to the licencing requirements of the US *Arms Export Control Act* for AUKUS partners, unless the US Secretary of State certifies Australia's export control framework as comparable to US export laws, regulations and policies. Table 2 compares Australia's current export control framework to the US export control framework to demonstrate where differences lie, and what Australia will need to change in order to achieve comparability with the US.

If Australia is unable to access the benefits of the US licence-free environment, this would mean that the status quo would continue. The barriers that impact the ability of each AUKUS partner to collaborate, cooperate and innovate would simply remain and directly impede the integration of security and defence-related science, technology, industrial bases and supply chains.

17 Greenwalt and Corben, 'Breaking the Barriers'; Rjiv Shah, 16 February 2023. 'US Export Rules need Major Reform if AUKUS is to Succeed.' Australian Strategic Policy Institute. Accessed 2 October 2023, <https://www.aspistrategist.org.au/us-export-rules-need-major-reform-if-aukus-is-to-succeed>. Sen. James Risch. 27 July 2023. 'AUKUS Succeeds if US eases Defense Regulations for Allies.' Defense News. Accessed 28 September 2023, <https://www.defensenews.com/opinion/2023/07/27/aukus-succeeds-if-us-eases-defense-regulations-for-allies/>.

18 The US Aerospace Industries Association (AIA); ADS, the UK trade association for aerospace, defence, security and space organisations; and the Australian Industry Group (Ai Group) released a joint paper in March 2023 outlining steps to reduce the trade, regulatory, and bureaucratic barriers that could hinder the historic AUKUS partnership. See: AIA, ADS and AiGroup. 8 March 2023. 'Operationalizing AUKUS - Industry's Trilateral Take on Defining Success.' *Aerospace Industries Association*. Accessed 8 March 2023, <https://www.aia-aerospace.org/publications/operationalizing-aukus/>. After the US legislative proposals were introduced, the group drafted another joint paper which strongly supported the US draft legislation. See: AIA, ADS, and AiGroup. 1 September 2023. 'Statement of Industry Consensus on AUKUS, Selected Defense Trade Provisions, and other Policy Matters.' *Aerospace Industries Association*. Accessed 1 September 2023, <https://www.aia-aerospace.org/publications/aia-statement-of-consensus-on-aukus/>.

19 ITAR taint applies to any goods or technology that is produced or manufactured from US controlled technical data or defense services and therefore may not be transferred to a foreign person without US approval.



Table 2: Comparison of the Australian and US export control framework

	Australian approach	US approach
Deemed exports	Australia does not have legislation to authorise the transfer of technical data within Australia, prior to the transfer occurring.	The US uses export control legislation to authorise deemed exports (the transfer of technical data within the US), prior to the transfer occurring.
Re-exports, deemed re-exports and re-transfers	Australia does not have legislation to prevent the transfer of controlled goods and technology by an Australian citizen or permanent resident that is not in Australia, prior to the transfer occurring.	The US uses export control legislation to authorise re-exports, deemed re-exports and re-transfers prior to the transfer occurring.
Provision of defence services (including foreign military training)	<p>Australia does not currently have legislation to authorise the provision of defence services, including military training to foreign governments, prior to the service or training occurring.</p> <p>Australia does have legislation (<i>Criminal Code Act 1995</i>) that makes it an offence to provide military training to foreign governments, including, using arms or practising military exercises, movements or evolutions. This legislation is only enacted after the military training has already been provided.</p> <p>On 14 September 2023, Australia introduced the SAMS Bill into Parliament, to regulate training provided by any Australian citizen or permanent resident of Australia, which would share sensitive Defence information related to export controlled technologies and military tactics, techniques and procedures, with foreign powers.</p>	The US uses export control legislation to authorise the provision of defence services, including military training to foreign governments, prior to the service or training occurring.

A comparable framework to the US requires Australia to amend its export control legislation to regulate what the US terms ‘deemed exports’, ‘re-exports’, ‘deemed re-exports’, ‘retransfers’ and the ‘provision of defence services’, to foreign persons by Australian entities (see Image 1 for definitions).

Affected stakeholders

The following stakeholders are currently impacted by US export controls:

- Australian Government, industry, higher education and research sectors seeking to import, re-export, re-transfer or deemed re-export US goods and technology controlled through the USML and CCL;
- US Government and US industry, research and higher education sectors seeking to export US goods and technology controlled through the USML and CCL; and
- UK Government and UK industry, research and higher education sectors seeking to collaborate with Australia on US goods and technology controlled through the USML and CCL.

The nature of the how stakeholders are affected relates to the investment in time and effort required to assess the need for obtaining export permits and, if required, the time and expense in applying and processing permits, and the carrying costs in excess inventory required to ameliorate the processing times. The largest component of the impact relates to costs incurred due to the time incurred to process applications. Currently, there is a net cost to Australian stakeholders of approximately AUD\$93 million per year in relation to these activities. Further detail on this cost is provided in **Question 4 in Option 1**.

Previous attempts to streamline technology transfer

It is important to note that these are not new barriers and there have been a number of government measures undertaken over the past decade to address them. These measures have not been successful, with each effort failing because of systemic barriers, including the six specific barriers outlined above.²⁰

20 Greenwalt and Corben, ‘Breaking the Barriers.’ Shah, ‘US export rules need major reform if AUKUS is to succeed.

In 2007, the Australian and US Governments signed the *Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation* (the Treaty).²¹ The Treaty was intended to improve the efficiency of eligible two-way transfers between Australia and the US by facilitating the export of controlled goods within an approved community without the need for an export licence. Despite these intentions, the Treaty has not improved the efficiency of eligible two-way transfers due to the scope (membership, eligible articles and approved activities) which restricts Australian industry and government disproportionality more than US industry and government.

In 2016, the US Congress changed the legal definition of the US Defense Industrial Base — officially known as the National Technology Industrial Base (NTIB) — to include Australia and the UK. The NTIB legal definition change was intended to foster a defence free-trade area among

the defence-related research and development sectors of the US, Canada, Australia and the UK. To date, however, the NTIB has only managed to facilitate limited bilateral cooperation due to conflicting legislation and policy in the US. In 2023, the US Government Accountability Office undertook a review of NTIB and found it is falling well short of its goal of enhanced integration.²²

The US has made recent internal efforts to improve effective technological and industrial cooperation between the AUKUS partners, including the *Export Control Reform Act of 2018* and the introduction of an Open General Licence pilot program in 2022 for sustainment and maintenance.²³ Success has been hampered to date as Australian entities are unable to utilise Open General Licences due to the limited scope of this authorisation. Since the introduction of the pilot program in 2022, the US has advised that Australia has only been able to utilise an Open General Licence in one instance.

Policy Problem 2:

Gaps in Australia's existing export control legislative provisions enable the transfer of controlled goods and technologies both within and outside of Australia to foreign entities. These foreign entities' interests and actions may be prejudicial to the security, defence or international relations of Australia.

Gaps in Australia's export control framework may prejudice Australia's security, defence and international relations

Australia is facing a more challenging strategic environment. The DSR notes Australia is entering the most difficult set of strategic circumstances since the Second World War. The rules and norms that underpin our security and prosperity are under threat.

Within this changing geostrategic environment, gaps in Australia's existing export control legislative provisions could enable the transfer of controlled goods and technologies both within and outside of Australia to un-trusted foreign entities with interests and actions that may be prejudicial to the security, defence or international relations of Australia.

Our current export control framework, while robust and multi-layered, fails to regulate through an authorisation framework the transfer of controlled DSGL technology in certain circumstances to foreign nations.

Australia's existing export control framework does not require authorisation for what the US terms 'deemed exports', 're-exports', 'deemed re-exports', 're-transfers' and the 'provision of defence services', including foreign military training to foreign persons by Australian entities. In practice, this means that in Australia, we require an export permit for DSGL controlled goods and technology to be transferred to a foreign national in another country. However, if that same foreign national visits Australia, we do not have any controls that prevent the provision of the DSGL controlled goods and technology to that individual.

21 Department of Foreign Affairs and Trade. 2013. 'Treaty Between the Government of Australia and the Government of The United States of America Concerning Defense Trade Cooperation.' Australian Treaty Series 17. Accessed 213 September 2023, <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2013/17.html>.

22 For a comprehensive examination of this prior history, see: William Greenwalt. 23 April 2019. 'Leveraging the National Technology Industrial Base to address great-power competition.' Atlantic Council. Accessed 6 September 2023, <https://www.atlanticcouncil.org/in-depth-research-reports/report/leveraging-the-national-technology-industrial-base-to-address-great-power-competition/>

23 US Department of State. 20 July 2022. 'Summary of the Open General Licence Pilot Program.' Directorate of Defense Trade Controls. Accessed 2 October 2023, https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=18d3a1e11bfcd910c6c3866ae54bcb466



Australia's national security and intelligence reporting

In recent years, gaps in existing controls have been identified as a problem nationally as well as globally. This is exemplified through national security and intelligence community reporting, university sector analysis, global proliferation case studies and international partners' legislative reforms to strengthen their respective export control frameworks. In a rapidly changing and increasingly challenging geostrategic environment, military and dual-use technical data is more vulnerable to theft or receipt by foreign entities with intentions prejudicial to Australia's interests.

These foreign entities may be contrary to and their actions may prejudice Australia's security, defence and international relations, including through espionage and foreign interference.

The 2023 Australian Secret Intelligence Organisation (ASIO) Director-General's Annual Threat Assessment emphasised the significant threat foreign interference and espionage pose to Australia's national security, including how this relates to AUKUS. It stated: "as we progress AUKUS, it's critical our allies know we can keep our secrets, and keep their secrets."²⁴

The ASIO Annual Report 2021-22 stated:

Foreign powers and their proxies continue to seek to steal information about Australia's political system, defence capabilities and operations, national security arrangements, unique science and technical data capabilities, our economic and trade advantages, our diaspora communities, and databases of personal information.²⁵

The espionage efforts of our adversaries are directed at all levels of government as well as Australia's science and technical data sectors, both military and civilian. Australia's increasing military capabilities and defence industry make us an attractive target.²⁶

At the public hearing of the Independent National Security Legislation Monitor's (INSLM) review into the operation and effectiveness of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act), the Director-General of National Intelligence said:

The challenge Australia faces from espionage and foreign interference today is unprecedented, and the threats are more serious and sophisticated than ever before.²⁷

ASIO assesses that foreign intelligence services from multiple countries are aggressively targeting all levels of government, seeking to interfere in our democratic institutions, and using increasingly advanced technology and tradecraft to do so.²⁸

The Australian National Intelligence Community (NIC) also provided a joint written submission to the INSLM Review for the NSI Act. In the submission, the NIC stated the current threat environment facing Australia included:

Foreign intelligence services seeking to penetrate government, defence, academia and business to steal classified information, military capabilities, policy plans and sensitive research and innovation. They are targeting all levels of government, intimidating members of diaspora communities and seeking to interfere in our democratic institutions.²⁹

A 2023 academic report *Are We Training Potential Adversaries?* examined national security challenges in the Australian higher education sector that arise from high rates of international collaboration.³⁰ The report urged the Australian Government to "consider whether its legislative and policy settings for disclosing foreign arrangements and export control legislation is currently set at the right level."

This is a global problem with many international governments looking to address these gaps

Other international governments are taking action within their own export control frameworks to address the proliferation risk posed by foreign nationals present within their own borders:

- Japan regulates the transfer of controlled dual-use technology to non-residents within Japan.
- China regulates the transfer of controlled goods and technology to foreign persons.

24 Mike Burgess. 21 February 2023. 'Director-General's Annual Threat Assessment.' Australian Security Intelligence Organisation. Accessed 2 September 2023, <https://www.asio.gov.au/director-generals-annual-threat-assessment-2023>.

25 Australian Security Intelligence Organisation. 2022. 'Annual Report 2021-22.' Australian Government. Accessed 2 September 2023, <https://www.transparency.gov.au/publications/home-affairs/australian-security-intelligence-organisation/australian-security-intelligence-organisation-annual-report-2021-22>.

26 Australian Security Intelligence Organisation, 'Annual Report 2021-22.'

27 Independent National Security Legislation Monitor. 19 July 2023. 'Review of the National Security Information (Criminal and Civil Proceedings) Act 2004.' Office of National Intelligence. Accessed 2 September 2023, <https://www.oni.gov.au/independent-national-security-legislation-monitor-inslm-review-nsi-act>.

28 Independent National Security Legislation Monitor, 'Review of the National Security Information (Criminal and Civil Proceedings) Act 2004.'

29 National Intelligence Community. 9 June 2023. 'Submission to the INSLM Review into the Operation and Effectiveness of the NSI Act.' Office of National Intelligence. Accessed 2 September 2023, <https://www.oni.gov.au/sites/default/files/documents/2023-07/9-national-intelligence-community.pdf>, pp. 8

30 Brendan Walker-Munro, Ruby Ioannou and David Mount. 'Are we training our potential adversaries?' Australian Universities, National Security and Challenges to Cybersecurity Education.' Australian Cyber Conference 2023, Melbourne, Australia, 17-19 October 2023.

- In 2021, the European Union (EU) introduced regulations on the provision of technical assistance (related to controlled dual-use goods) to a non-EU resident temporarily located within the EU.³¹
- In 2021, New Zealand widened its catch-all controls that apply to goods and technology which were not otherwise regulated under New Zealand's export control framework. In recognition of national security and proliferation risks, the controls now cover activities that materially enable or support operations and activities of a military or internal security nature.³²

A number of open-source case studies published by the King's College London demonstrate the potential proliferation risks associated with controlled goods and technology:

Example 1: Between 2011 and 2016, Person A (a Taiwanese citizen) and Person B (a dual US-Taiwanese citizen) worked for Chengdu Gastone Technology Company (CGTC), a Chinese company listed on the US Department of Commerce Entity List. This listing meant that a licence was required from the US Government to export, re-export or transfer controlled goods or technology to CGTC. Person C (a US citizen) set up a US based front company with Person B to target and falsely pose as a domestic US customer to Company B to order controlled semi-conductor chips. These chips have military applications including for use in missiles, military jets and electronic warfare.³³ These chips were subsequently illegally exported to Hong Kong and Canada. One was also sent to a US University for testing where a research report summarising the test results was produced. Person C also gained access to Company B's design portal and provided access to Person B. CGTC is said to have obtained this proprietary technology and could use it to produce these chips in China.

Example 2: In 2011, Norway's Institute for Energy Technology, provided controlled intangible digital test results relating to a fuel sample to the Brazilian Navy without an export control licence. This data was subsequently used in the testing of nuclear fuel for military submarines in Brazil's Nuclear Submarine Propulsion Project. This case study demonstrates risks associated with the transfer of controlled technology, as the transfer was found to have supported Brazil's military capability without the oversight of the Norwegian Government.³⁴

Example 3: The Centre for Space Science and Technology Education in Asia and the Pacific (CSSTEAP), located in India, contributes to capacity building in space science and technology across the Asia Pacific region through education, training and research. Despite intentional screening and efforts by the CSSTEAP to guard against proliferation risks, a UN Panel of Experts on the Democratic People's Republic of Korea (DPRK) found that several students admitted to CSSTEAP programs between 1996 and 2026 had ties to the DPRK's sanctioned proliferation programs. Two North Korean students were found to have taken a Space and Atmospheric Science course with direct applications to design and testing launch vehicles using ballistic missile technology.

King's College London, who reported on this case, highlighted that:

This case study demonstrates that the risks of intangible technology going towards a proliferation programme were significant.

The DPRK actively attempts to acquire technology for its illicit nuclear and ballistic missile programmes by using the cover of 'peaceful' technological programmes such as its space programme through which it seeks acceptance and access to international organisations.³⁵

Previous attempts to address gaps in Australia's export control framework

In 2018, a public Independent Review into the DTC Act³⁶ identified gaps in Australia's export control framework and provided recommendations to the Australian Government to address these gaps. The report of the Independent Review was tabled in Parliament in late 2018. Recommendation Four proposed the Australian Government develop practical proposals to address the provisions relating to locational criteria at the time of supply, the transfer of technology which could prejudice Australia's security, defence and international relations, and the inadequate control of emerging and sensitive military and dual-use technology. The Independent Review also provided recommendations to ensure that changes do not restrict trade, research or international collaboration. The Government tabled its initial response to the Independent Review which supported all nine recommendations.

31 Edouard Gergondet. 2023. 'A rose by any other name? Deemed export controls are coming to fruition in the EU.' World ECR, Issue 113, pp. 25.

32 New Zealand Ministry of Foreign Affairs and Trade. 2023. 'Which Exports Are Controlled?' New Zealand Ministry of Foreign Affairs and Trade. Accessed November 3, <https://www.mfat.govt.nz/en/trade/export-controls/which-exports-are-controlled/>

33 Emma Scott, Ross Peel, Felix Ruechardt and Nick Mitchell. September 2020. 'Catalogue of Case Studies on Intangible Technology Transfer from Universities and Research Institutes.' Kings College London. Accessed 6 September 2023, <https://www.kcl.ac.uk/cssts/assets/itt-case-studies-2020.pdf>.

34 Scott, Peel, Ruechardt and Mitchell, 'Catalogue of Case Studies on Intangible Technology Transfer from Universities and Research Institutes.'

35 Scott, Peel, Ruechardt and Mitchell, 'Catalogue of Case Studies on Intangible Technology Transfer from Universities and Research Institutes.'

36 The Independent Review was established in April 2018 in accordance with section 74B of the DTC Act, which requires that a review of the DTC Act be undertaken two years after the commencement of section 10 of the DTC Act. For more information on the review.

See: Vivienne Thom AM. 19 October 2018. 'Independent Review of the Defence Trade Controls Act 2012.' Department of Defence. Accessed 6 September 2023, <https://www.defence.gov.au/business-industry/export-controls/export-controls/independent-review-dtc-act-2012>





What data is available?

Evidence for **Policy Problems 1** and **2** has been obtained through the collection of case studies and consultation with Australian industry, higher education and research sectors, international partners and their industrial bases, as well as publicly available reports and analysis.

In relation to **Policy Problem 1**, Defence has also used existing export control data from the DEC ICT System managed by DEC, the Integrated Cargo System (ICS) managed by the ABF and from the Department of Education. Data obtained from the DEC ICT System includes the number of permits issued for controlled goods, software and technology. Data obtained from the ICS includes both the export and import of controlled goods. Data of US controlled exports to Australia has also been obtained from the US Department of State and US Department of Commerce.

In relation to **Policy Problem 2**, it is impractical to measure the impact of potential exploitation of gaps in Australia's existing export control legislation, due to their sporadic

timing and each incident's nature being highly varied where the true impact is not known until years later.

A key limitation of this Impact Analysis is the availability of data to support the assessment of **Option 2**. Due to the nature of these controls not existing in Australia currently, there is no detailed administrative data to support a full quantitative assessment. Instead, survey data from the ABS and summary level administrative data from the Department of Education is relied on to identify the potential cohorts of the Australian population affected by the introduction of deemed supply permits.

A further limitation relates to the Australian Government's ability to publicly share data from DEC and ABF due to the security classification of the data and the permitted legal reasons for using this government collected data.

Further discussion of data availability and quality can be found in the chapter answering **Question 4**.



QUESTION 2

What are the objectives, why is government intervention needed to achieve them and how will success be measured?

The Australian Government legislates and administers Australia's export control framework. By doing this, the Australian Government is able to protect Australia's national interests and uphold its international obligations and commitments under treaties and international regimes. Accordingly, any changes to Australia's export control framework requires intervention from the Australian Government.

Robust, fit for purpose export control frameworks must address contemporary threats and be agile to respond to new and emerging threats, without unnecessarily restricting

trade. As identified in **Question 1**, Australia's export control framework is no longer meeting these national interest objectives. Without reform, trade among AUKUS partners will continue to be slowed through unnecessary regulatory burdens that ultimately impedes the delivery of military capabilities in a time of heightened geopolitical tensions. With the loss of strategic warning time for conventional conflict, the time to act is now.

Objectives of government intervention

Defence's objectives in addressing the identified policy problems are:

Objective 1

Fast-track the delivery of leading-edge defence capabilities into the hands of our forces more efficiently, maintaining Australia's capability edge.

Objective 2

Certification by the US Secretary of State that Australia's export control framework is at least comparable to the US. This will allow Australia to access the country-based exemption proposed by the US Congress for AUKUS partners.

Objective 3

Prevent the unwanted proliferation of controlled goods and technology and reduce the risk of controlled goods and technology being acquired by entities not aligned with Australian interests, thereby better protecting Australia's national security.

Objective 4

Limit the regulatory burden on Australian industry, higher education and research sectors to encourage innovation and cooperation at an unprecedented pace. This will provide Australia, and our international partners, with a genuine capability development and innovation edge.

Why is government intervention needed to achieve the objectives?

The realisation of AUKUS will be enabled by promoting deeper information and technology sharing and fostering deeper integration of security and defence related science, technology, industrial bases and supply chains among and between AUKUS partners. Antiquated and complex export control frameworks currently hinder our ability to do this.

Australian industry, higher education and research sectors have sought Australian Government intervention to reduce regulatory barriers to trade, particularly with the US. Industry associations in Australia, the UK and US have argued in the paper 'Operationalizing AUKUS' that a reduction in export control barriers is required to facilitate trade, cooperative programs, and advanced technology transfers.³⁷ In a more complex strategic environment, it is vital that AUKUS governments work together to overcome these barriers and deliver on the ambition of AUKUS and the opportunities this partnership brings.

The creation of an export licence-free environment among and between AUKUS partners would revolutionise trade, encourage innovation and cooperation at an unprecedented pace, and provide a genuine capability development edge.

The US Government has taken the first step to reduce barriers to cooperation by progressing a full national exemption to the licencing requirements of the US *Arms Export Control Act* for both Australia and the UK. A legislated prerequisite for this country-based exemption is for Australia to have an export control framework that is at least comparable to US export control legislation and regulation. It is important to note the draft legislative amendment to the US *Arms Export Control Act* states the framework must be comparable and not necessarily the same.

In comparing the export control frameworks between Australia and the US (see **Question 1**, Table 2), there are a number of differences. Australia's export control framework does not regulate deemed exports, re-exports, deemed re-exports, re-transfers and the provision of defence services to foreign persons by Australian entities in a comparable way to the US. As Australia's export control framework is the responsibility of the Australian Government, the Australian Government must determine how it would meet the prerequisites and be found comparable in order to access the exemption in the US *Arms Export Control Act*.

³⁷ AIA, ADS and AIGroup, 'Operationalizing AUKUS.' AIA, ADS and AIGroup, 'Statement of Industry Consensus on AUKUS.'

Alternatives to government intervention

To avoid government intervention, the Australian Government needs to demonstrate its current collective protective security environment delivers an export control framework that is at least comparable to US law, regulation and policy. Neither of the alternative approaches below would meet the objectives and address the policy problem statements.

Recognition of existing regulation

Defence has examined Australia's whole-of-government protective security environment and its current protections over sensitive technology. As noted in the Independent Review of the DTC Act, there are gaps in Australia's protective security framework that risk Australia's national security through the potential proliferation of sensitive goods and technology to adversary states and non-state actors. The US Government has requested Australian advice on how this known gap has been addressed, noting it is addressed in the US through US export control legislation. Maintaining Australia's current protective security environment would not address either policy problem statement.

Self-regulation

Australia's industry, higher education and research sectors could seek to address the gaps in Australia's export control framework through voluntary codes of conduct or accreditation schemes. This alternative has been successfully implemented in various other sectors. However, this alternative was rejected as it would not meet Australia's objective to have an export control framework that the US assess as comparable to its own. Secondly, it is unclear if the costs borne by the industry, higher education and research sectors in establishing and complying with this self-regulation would be lower than the costs of a focused Australian Government process. Thirdly, given the nature and severity of the risks, including the consequence to life, government regulation is considered more appropriate than voluntary approaches which may be inconsistent and have a slow uptake.

Barriers to government action

Objective 1: Fast-track the delivery of leading-edge defence capabilities into the hands of our forces more efficiently, maintaining Australia's capability edge.

Achieving Objective 1 is dependent on the Australian Government, the UK Government and the US Government establishing a licence-free environment among and between AUKUS partners. Noting that Australia imports a high volume of military equipment from the US, changes to Australia's export control framework alone would not achieve this objective.

Objective 2: Certification by the US Secretary of State that Australia's export control framework is at least comparable to the US. This will allow Australia to access the country-based exemption proposed by the US Congress for AUKUS partners.

Achieving Objective 2 is dependent on the US Secretary of State assessing that Australia's export control framework is comparable to US export control laws, regulations and policies. It is critical that the US Department of State is recognised as a key stakeholder and consulted in the development of policy options to ensure this objective is achieved.

Objective 3: Prevent the unwanted proliferation of controlled goods and technology and reduce the risk of controlled goods and technology being acquired by entities not aligned with Australian interests, thereby better protecting Australia’s national security.

Changes to Australia’s export control framework alone would achieve this objective.

However, there are a number of barriers to fully achieving this objective that stem from the behaviour of individuals and entities. Changes to Australia’s export control framework to prevent the proliferation of controlled goods and technology relies on Australian Government entities, Australian industry, higher education and research sectors, Australian based individuals, as well as foreign nationals in receipt of exported Australian controlled goods and technology, seeking approval to transfer the controlled goods and technology to a foreign national. It also requires them to comply with any permit conditions outlined by DEC.

An extensive education and outreach program will be required to ensure that individuals and entities are aware of their legal obligations, matched with an effective compliance program. Further detail in relation to outreach and compliance to support the best option is detailed in **Question 6**.

Objective 4: Limit the regulatory burden on Australian industry, higher education and research sectors to encourage innovation and cooperation at an unprecedented pace. This will provide Australia, and our partners, with a genuine capability development and innovation edge.

Changes to Australia’s export control framework alone would partially achieve **Objective 4** to deliver a net reduction in regulatory burden for Australian industry, higher education and research entities. To realise the full ambition of this objective, the Australian, UK and US Governments will need to create a licence-free environment among and between AUKUS partners to deliver regulatory relief across all three industrial bases.

How will success be measured?

Success in meeting the current policy objectives can be measured both qualitatively and quantitatively as demonstrated in Table 3.

Table 3: Success indicators

Success Indicator	What is the success measurement	How it will be measured
<i>Indicator 1</i>	Australian Government, industry, higher education and research sectors can access the full country-based exemption proposed by the US Congress for AUKUS partners.	US Congress passes and implements legislation that provides a full country-based exemption.
<i>Indicator 2</i>	A robust export control framework that protects sovereign technology and prevents the unwanted and unlawful proliferation of controlled technologies that could prejudice Australia’s security, defence and international relations.	A post-implementation review of DEC compliance monitoring. Engagement with the AUKUS partners.
<i>Indicator 3</i>	Collaboration and innovation between industry, higher education and research sectors in Australia, the UK and the US is accelerated.	A quantitative evaluation of permit numbers and processing times for industry, higher education and research sectors and those of AUKUS partners. Assessment of the effectiveness of the outreach, education and communication campaign.
<i>Indicator 4</i>	Export control-related barriers between industry, higher education and research sectors in Australia, the UK and the US are removed.	A quantitative evaluation of the impact on industry, higher education and research sectors.
<i>Indicator 5</i>	There is a reduction in costs borne by Australian industry, higher education and research sectors in applying for export control licences.	A qualitative evaluation of the impact on industry, higher education and research sectors.

QUESTION 3

What policy options are you considering?

In identifying the policy options to address the stated policy problems in **Question 1**, it was apparent that the Australian Government has a limited range of options to achieve the objectives. This is largely due to the interdependent export control reforms in the UK and the US.

To address the first policy problem, Australia must be able to achieve US certification that its export control framework is at least comparable to US export control legislation and regulation. This is a legislated prerequisite for country-based exemptions to the export control licencing requirements in the *US Arms Export Control Act*.

As demonstrated in **Question 1**, there are a number of key differences between Australian export control legislation and regulations and US export control legislation and regulations. A key point of difference is that Australia does not have a mechanism for the deliberate consideration and authorisation of transfers of controlled goods, software and technology wholly within Australia or wholly outside Australia or for the provision of defence services.

Further, to give effect to a trilateral licence-free environment, Australia must provide a permit exemption for the export of goods, software and technology to the UK and the US. This can only be achieved through the introduction of new legislation that amends current Australian export control legislation.

Exploration of a non-regulatory option was undertaken and was found to be unsatisfactory. The non-regulatory option sought to demonstrate to the US that the collective of all of Australia's protective security measures delivered an export control framework that is at least comparable to US export control legislation and regulation. The US was not satisfied with this option, noting that this option failed to deliver a model that involved the deliberate consideration of the activity and authorisation via a permit by the Australian Government.

Defence considered two policy options in addition to maintaining the status quo against the policy objectives outlined in **Question 2**. This ensures the proposed option is fit for purpose and minimises regulatory burden.

Option 1 – Maintain the status quo

Option 1 maintains Australia's existing export control framework.

This option allows the Minister for Defence (or delegate who is the Secretary, a Senior Executive Service employee or acting Senior Executive Service employee, or Australian Public Servant employee who holds or is acting in an Executive Level 1 or 2 position) to grant a permit in the following circumstances where they are satisfied the activity would not prejudice the security, defence or international relations of Australia:

1. The export or supply of DSGL controlled goods, software or technology from a person in Australia to another person located outside of Australia;
2. The publication of DSGL software or technology by a person in Australia, or a citizen or resident of Australia,

to the public (or a section of the public) through the Internet or other means; and

3. The brokering of DSGL goods, software and technology where a person acts as an agent or intermediary in arranging the supply of DSGL goods, software and technology between two places outside of Australia and receives money, a non-cash benefit or advances their political, religious or ideological cause for arranging the supply.

Australia's existing export control legislation also contains a number of exceptions (**Appendix 2**).

Where required, Defence undertakes inter-agency consultation to inform decisions over approving or refusing permits.

If satisfied that the activity, or continuation of the activity, may prejudice the security, defence or international relations of Australia, only the Minister for Defence has the power to refuse to grant or to revoke the permit. The Minister for Defence must provide the applicant or permit holder with a notice outlining the reason for the refusal or revocation.

Australia's export control framework does not currently:

1. Regulate the deemed supply of DSGL technology from a person within Australia to another person within Australia;
2. Regulate the re-export of DSGL goods, software and technology (that was originally exported from Australia) from a foreign country (that is a country other than Australia) to another foreign country;
3. Regulate the deemed re-supply of DSGL technology (and that was originally exported from Australia) to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release takes place (this includes a third-party foreign person working at the approved export destination);
4. Regulate the re-transfer, including change in end-use or end-user, or a temporary transfer, of DSGL goods, software and technology to a third party, of DSGL goods, software, and technology within the same foreign country;
5. Regulate an Australian citizen or permanent resident providing a DSGL service, including training, or DSGL technology to foreign persons, whether in Australia or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing or use of goods or technology controlled in Part 1 of the DSGL; or
6. Provide a licence-free environment for the transfer of DSGL goods, software and technology to the UK or the US.

Under **Option 1**, the current export control legislative framework will continue in its current form.

The UK has not requested that Australia make any amendments to its export control framework in order to access an exemption from the UK export control licencing requirements. A bilateral licence-free environment would be possible under **Option 1**.

Option 2 – Strengthen Australia's export control framework

Option 2 maintains Australia's existing export control framework as described above and in **Appendix 2** but strengthens it further by regulating deemed supplies, re-supplies and the provision of DSGL services through an amendment to the DTC Act.

This option will allow the Minister for Defence (or delegate who is the Secretary, a Senior Executive Service employee or acting Senior Executive Service employee, or Australian Public Service employee who holds or is acting in an Executive Level 2 or Executive Level 1 position) to grant a permit for deemed supplies, re-supplies and the provision of DSGL services where they are satisfied the activity would not prejudice the security, defence or international relations of Australia. This would represent an increase in domestic regulation for Australian industry, higher education and research sectors dealing with DSGL controlled goods, software and technology.

If satisfied that the activity, or continuation of the activity, may prejudice the security, defence or international relations of Australia, the Minister for Defence (or delegate who is the Secretary, a Senior Executive Service employee or acting Senior Executive Service employee) will have the power to refuse to grant or revoke the permit. This is

a change from the current delegation levels. The Minister for Defence (or delegate) must provide the applicant or permit holder with a notice outlining the reason for the refusal or revocation.

This option also introduces a reciprocal national exemption from Australian export control permit requirements for the UK and the US to create a licence-free environment. This would, like the proposed US exemption, enable the export, supply, deemed supply, re-supply, and provision of DSGL services among and between Australia, the UK and the US without the need for a permit from Australia. This would represent a decrease in domestic regulation for Australian industry, higher education and research sectors dealing with DSGL controlled goods, software and technology.

To utilise the national exemption provided by the US, Australian exporters will need to register with DEC, as is currently required.

Option 2 will enable Australia to be found comparable to the US and access the country-based exemption to the licencing requirements of the *US Arms Export Control Act* for AUKUS partners. This will mean that Australian Government, industry, higher education and research entities seeking to import, re-export, re-transfer or deemed re-export US goods and technology controlled through the USML and CCL among and between AUKUS partners will no longer require a licence from the US Government. It will also remove known gaps and prevent the unwanted transfer of DSGL controlled goods and technology within and outside Australia.

Option 2 has been brought forward as a viable policy option for consideration following consultation with stakeholders who currently export DSGL controlled goods and technology. The Australian Government consulted with government stakeholders and AUKUS partner governments

and conducted targeted consultation with Australian industry, higher education and research sectors.

The Australian Government could strengthen Australia's export control framework through **Option 2** with the sub-option to:

- a) Provide complementary exceptions that would reduce the number of Australian entities that would be affected by the proposed legislative change, as requested during consultation with stakeholders.
- b) Not provide complementary exceptions under the proposed legislative change, which would increase the number of entities that would be affected.

The UK has not requested that Australia make amendments to its export control framework. Under **Option 2**, both sub-options, would create a permit-free environment for exports to the UK.

Sub-option 2A – legislative changes with complementary exceptions

Option 2A includes a number of complementary exceptions to the legislative amendments in the DTC Act. These exceptions will be accessible to regulated entities, will not pose an undue regulatory burden and will facilitate Australia's critical collaborations with key economic, trade, and research partners.

The inclusion of exceptions is designed to facilitate a more streamlined approach to sharing DSGL controlled goods and technology without compromising Australia's security, defence or international relations. The objective of this option is to reduce unnecessary compliance burdens faced by industry, higher education and research sectors whilst ensuring the controls adequately address the national security requirements.

This sub-option was considered at the request of all directly impacted stakeholders to meet **Objective 4** by limiting the regulatory burden on Australian industry, higher education and research sectors. Inclusion of the below exceptions under **Option 2A** is strongly supported by stakeholders.

The inclusion of exceptions would require regulated entities to undertake an internal self assessment. If the regulated entity meets the conditions of an exception, a permit will not be required. If the regulated entity does not meet the conditions of the exception, the regulated entity will need to apply for the relevant permit. This self assessment related to exceptions is familiar to directly impacted stakeholders, as it is consistent with how current exceptions are applied in the DTC Act.

Option 2A with complementary exceptions

Exceptions to be included in the DTC Act

Permits will not be required for the supply of DSGL goods and technology to:

- A citizen or permanent resident of the UK or US at a place in Australia, the UK or the US;
- A body corporate incorporated by or under a law of the UK or US, or of a part of either of those countries, at a place in Australia, the UK or the US;
- The Government of the UK or US, or the government of a part of either of those countries at a place in Australia, the UK or the US;
- An authority of the Government of the UK or US, or the government of a part of either of those countries at a place in Australia, the UK or the US;
- A foreign employee that is a citizen or permanent resident of a foreign country that is specified in the DTC Act Foreign Country List (FCL) (see **Appendix 3** for a list of countries on the FCL);
- A person who holds a covered security clearance given by the Australian Government Security Vetting Agency or by another Commonwealth agency that is authorised or approved by the Commonwealth to issue security clearances or the Governments of the UK, US, Canada or New Zealand.



Complementary exceptions under consideration for inclusion in the DTC Regulation

The Australian Government is consulting on a ‘build-to-print’ exception for inclusion in the DTC Regulation. ‘Build-to-print’ occurs when a component of a DSGL good is produced from engineering drawings without any technical assistance. The component built would not enable the manufacturer to reverse engineer and make the complete DSGL good. This Impact Analysis has not modelled the impact of the inclusion of a build-to-print exception.

The DTC Bill also includes a provision for additional exceptions to be prescribed in the regulation. This allows for additional exceptions to be introduced at any time in the future. This provision provides flexibility, reduces the regulatory burden on Australian stakeholders and

ensures exceptions are designed in line with the protective security environment.

Expansion of definitions in the DSGL

The Australian Government will remove the Basic Scientific Research definition in the DSGL and replace it with a definition for Fundamental Research. The Australian Government is consulting the industry, higher education and research sectors on the final wording for the Fundamental Research definition to ensure it is fit for purpose in the Australian academic environment. This Impact Analysis has modelled the impact based on using the definition of Fundamental Research in the ITAR as this is the preferred approach (see Image 3 for definitions of Basic Scientific Research in the DSGL versus Fundamental Research in the ITAR and EAR).

Image 3: Definitions of ‘basic scientific research’ in the DSGL versus ‘fundamental research’ in the ITAR and EAR

US Definition: International Traffic in Arms Regulations

ITAR § 120.34 Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific US Government access and dissemination controls.

Australian Definition: Defence and Strategic Goods List 2021

Division 4 – Definitions: “Basic scientific research” means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.



US Definition: International Traffic in Arms Regulations

ITAR § 120.43 Basic research means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include applied research.

US Definition: Export Administration Regulations

EAR § 734.8(c) Fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

US Definition: International Traffic in Arms Regulations

ITAR § 120.43 Applied research means a systemic study to gain knowledge or understanding necessary to determine the means by which a recognised and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Sub-option 2B – no complementary exceptions

Option 2B does not include any complementary exceptions to the proposed legislative amendments. The exceptions under consideration which are excluded from this sub-option are outlined in **Option 2A**.

This sub-option meets the policy objectives and provides a valuable comparison of the impact of exceptions compared to **Option 2A**.

Under **Option 2B**:

- All regulated entities will need to apply for a deemed supply permit for all foreign national regular employees;
- All regulated entities will need to apply for a deemed supply permit for all foreign nationals who will be provided DSGL technology to support the manufacture of component parts of DSGL goods;
- Australian research bodies and the higher education sector will need to apply for a deemed supply permit and export permit for DSGL goods and technology that exceed the current definition in the DTC Act of Basic Scientific Research. As the definition of Fundamental

Research is more expansive than Basic Scientific Research, the cohort affected will be a larger cohort than **Option 2A**'s proposal to replace the definition of Basic Scientific Research with a definition of Fundamental Research;

- There will be a greater number of permit applications for Australian export control authorities to assess and review. This will increase the Australian Government's processing costs and staffing resources, and will increase the processing time for permit applications; and
- There will be a much larger impact on the Australian economy in the transition phase as there will be a greater number of people impacted. This may reduce overall production or trade activity in the short-term.

Non-regulatory option (not progressed)

Defence explored a non-regulatory option to address the policy problem statement and achieve the Australian Government's objectives.

Following the establishment of AUKUS on 15 September 2021, the US Government indicated to the Australian Government it was willing to transfer certain sensitive technologies to Australia to further the joint security objectives of all three AUKUS partners. As a prerequisite, the US Government requires that suitable security arrangements be in place to prevent proliferation of US sensitive technologies. The US Government notes that Australia's protective security framework has gaps.

From late 2022, Defence engaged across the US Government, including with the US Department of Defense and the US Department of State, to seek agreement that in the broader context of Australia's protective security framework that comprises screening measures, legislation and regulation, policies, guidelines and penalties, Australia's export control framework was sufficiently comparable to the US export control framework. This engagement occurred at both ministerial and bureaucratic levels.

The US Government concluded that the current Australian export control legislation itself is not comparable to US export control legislation to regulate the transfer of controlled military and dual-use technologies. This means within the context of the proposed creation of an AUKUS innovation ecosystem for controlled goods and technology, which will fast track capability development, Australia's export control framework is not sufficiently comparable.

The US Government's conclusion means that pursuing non-regulatory options outside of the export control framework is unfeasible. It does not lead to the desired policy objectives outlined in **Question 2** due to the remaining differences between the Australian and US export control laws, regulations and policies that protect sensitive US military and dual-use technologies. Further, it does not prevent the proliferation of controlled goods and technologies both within and outside of Australia to foreign entities whose interests and actions may be prejudicial to the security, defence or international relations of Australia.



QUESTION 4

What is the likely net benefit of each option?

A Regulatory Burden Costing³⁸ has been undertaken in accordance with the Regulatory Burden Measurement Framework in the guidelines provided by the OIA.³⁹ The costing has been undertaken for each option explored – **Option 1**, **Option 2A** and **Option 2B**.

The costs and benefits of each option are estimated individually over a 10-year period. This includes the cost of maintaining current regulatory settings and continuing regulatory burden under the status quo (**Option 1**). The costs of **Option 2A** and **Option 2B** are presented as a standalone figure as well as the net impact (cost savings) in comparison to the status quo (**Option 1**). The net impact (cost savings) is calculated by subtracting **Option 2A** and **Option 2B**'s costs from the costs of **Option 1**.

All quantified values are presented in net present value,⁴⁰ discounted by 7%. Sensitivity analysis⁴¹ for discount rates of 3% and 10% has also been undertaken.

The Regulatory Burden Costing considers the following:

- Part 1: Sectors of the Australian economy affected
- Part 2: Types of impact
- Part 3: Costs assessment
- Part 4: Sensitivity analysis

The potential impact of each policy option is mapped to the relevant sectors (Australian Government, industry, higher education and research) of the economy impacted. For each sector, the options are assessed by considering specific direct, indirect and ancillary indirect effects. Finally, entities are grouped into cohorts to determine all of the potential changes from trade movements. Change in trade movements covers:

1. Trade type (imports, exports, deemed supply, re-supply and DSGL services); and
2. Flow of trade (origin, interim and final destination) by country (Australia, UK or US, and other).

Initial caveats on the assessment

Quantification is not always possible due to lack of available and robust data sources. The assessment is caveated as follows:

- The Australian Government has not quantified the benefits from greater collaboration, access to technology transfer and increased competitiveness from industry, higher education and research sectors in our net benefit calculations;
- In these cases, a qualitative assessment is undertaken to determine an appropriate directional change (positive, negative or neutral) for each option, relative to the status quo and other options; and
- As a result, not all costs and benefits can be robustly quantified. An overall cost benefit ratio has not been produced for these examples. The economic analysis is supplemented with a qualitative discussion of costs and benefits for the remaining unquantified impacts.

This chapter's economic analysis on the policy options is conservative and likely to represent an under-estimate of the net benefits for two key reasons:

- The quantified benefits are based on a conservative estimation method and robust data sources. This approach provides a high level of confidence over the quantified benefits.
- The analysis quantifies the major cost categories associated with the introduction of deemed supplies and costs to the regulator. There were however several categories of benefits that were not quantifiable due to data limitations. The Australian Government still expects these categories of benefits will provide material positive outcomes for the Australian economy and community.

38 A Regulatory Burden Costing is an exercise to estimate the effort and cost placed upon business, community organisations and individuals to comply with regulations.

39 The Australian Government seeks to avoid the imposition of unnecessary regulatory burden on businesses, community organisations and individuals. All new regulations or changes to existing regulations need to quantify regulatory costs using the Regulatory Burden Measurement Framework. Refer to: Department of Prime Minister and Cabinet. 6 September 2023. 'Regulatory Burden Measurement Framework.' Office of Impact Analysis. Accessed 21 October 2023, <https://oia.pmc.gov.au/resources/guidance-assessing-impacts/regulatory-burden-measurement-framework>.

40 When values are presented as net present values, it means that the future inflow and outflow of costs and benefits are combined and adjusted to reflect their value today. The adjustment reflects the reality where 'a dollar in the future is worth less than a dollar now' and includes factors such as expected inflation, interests that could be earned and risks that could reduce the benefit.

41 Sensitivity analysis provides information about how changes in different assumptions will affect the overall costs and benefits of the proposed regulation. It shows the sensitivity of predicted net benefits to different values of uncertain assumptions and to changes in variables. It tests whether the uncertainty over the value of certain assumption matters and identifies the critical one.

The following key assumptions, based on historical data, underpin the assessment:

- An average permit processing time is in the range of 18 – 41 days;
- The total value of controlled exports to Australia from the UK and US is more than AUD\$11.0 billion a year;
- Drawing on the US experience and accounting for uncertainty, 5.8% of people in industry, higher education and research sectors will require a deemed supply permit;
- DEC costs will increase in the short-term to account for education and outreach, implementation of this legislation and an increase in early deemed supply permit applications by industry, higher education and research sectors. These permits are covered by exceptions but applications are expected to increase in the short-term and later decrease with education and outreach;
- **Option 1** presents an opportunity cost on reduced capital and reduced efficiency. This is due to delays in asset and product movement while waiting for export permits to be issued. The cost of import permits is expected to be directly attributable to the Australian market via pass-through costs from overseas vendors to Australian customers;
- To quantify potential benefits and cost savings, the Australian Government assumes that the value of total exports to Australia does not grow and remains constant over time. This provides a conservative estimate that does not account for the expected increase (growth) in activity levels between the AUKUS partners over time. As barriers are reduced, this will likely produce greater benefits and cost savings than this assessment indicates; and
- All quantified cost and benefit values are presented in net present value, discounted at a rate of 7% per annum.

Data quality considerations

A key challenge to calculating the quantitative net benefit is accessing sufficient data to make an accurate calculation. The following data is used to inform the analysis:

Unit record administrative data

- ABF data on exports from Australia to the US and UK, and vice versa for imports; and
- DEC data on export permits issued by Australia and public performance reports.

Summary administrative data

- Permits issued by the US for the export of controlled goods and technology to Australia by the US Department of State and the US Department of Commerce; and
- Department of Education data on the number of commencing and continuing postgraduate research university enrolments in relevant fields of study.

Survey data

- ABS Census 2021 data, specifically on non-Australian citizens employed in industries and occupations that could interact with controlled goods and technology; and
- ABS data from Employee Earnings and Hours, May 2021.

Data quality notes

- In comparison to survey data, unit record administrative data is highly reliable as it includes information collected by government as part of their interactions with businesses, organisations and individuals. It is important to acknowledge that unit administrative data can be volatile to unforeseen global or national emergencies. There were no volatilities identified in the unit record administrative data analysed for this assessment. The latest full year data formed the volume baseline, and the last three to five years of data formed estimate averages.
- Summary administrative data was utilised where unit record administrative data was unavailable. Summary administrative data obtained from the relevant authorities support overall estimates. For distributional analysis, unit record administrative data or highly disaggregated summary data is required.
- While detailed ABS survey data is suppressed on extraction to protect the privacy of individual respondents, the dataset extracted for this Impact Analysis is large enough to be reliable.

While the data noted above is adequately robust to support the net benefits estimated and the conclusion drawn, the following additional data could improve the analysis further:

- US Department of State and US Department of Commerce unit record administrative data for export permits could provide a weighted average calculation of the value of goods delayed;
- ABF and DEC merged unit record administrative data could provide a weighted average calculation of the value of goods delayed;
- Post-implementation, DEC data on the number of deemed supply permit applications received from higher education and research sector applicants, broken down by field of study and classification of the level of research; and
- Post-implementation, data on the additional research outcomes generated in Australia from greater access to UK and US research projects and resources.

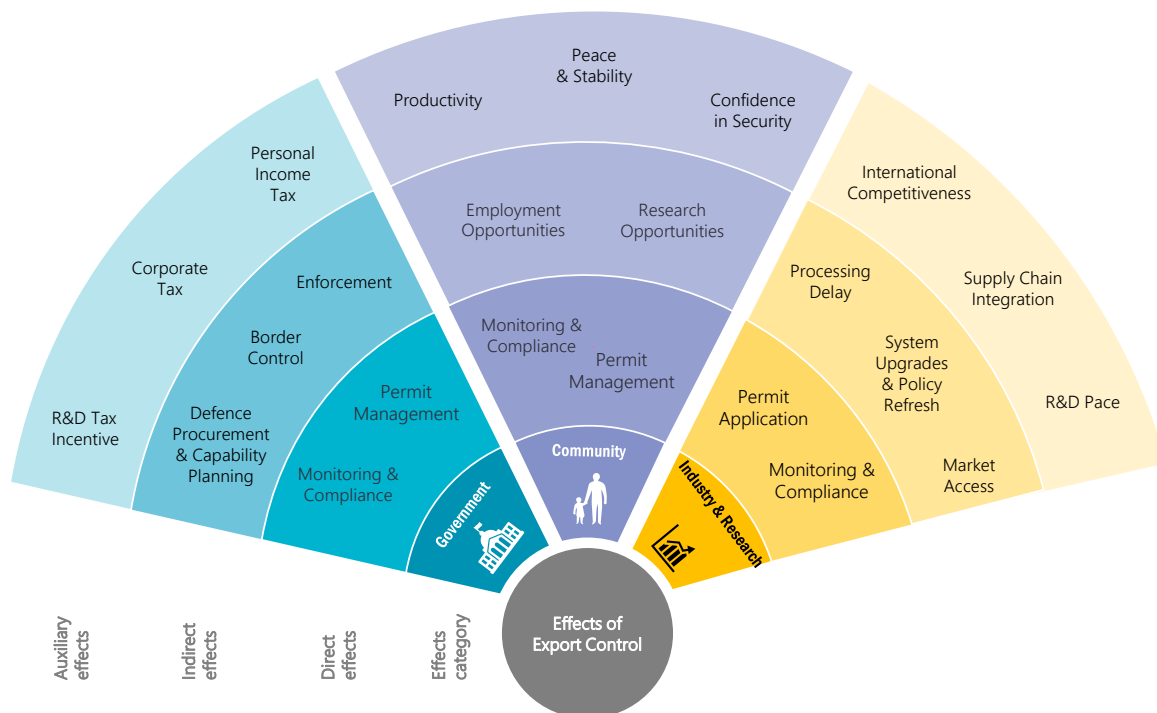
The Australian Government notes that Defence is unable to access some of the above data for the following reasons:

- US Department of State and US Department of Commerce ICT system constraints; and
- Classification and legal constraints preventing the use or public release of DEC and ABF data.

Part 1: Sectors of the Australian economy affected

This Impact Analysis categorises the Australian economy as the Australian Government, the community and the industry, higher education and research sector, as outlined in Image 4. The impact on these three sectors is categorised by how direct the impact is on the economy.

Image 4: Effects of export controls on impacted sectors



Option 1 maintains the status quo. Australia’s current export control framework (including the DTC Act, DTC Regulation and Customs PE Regulations) and the UK and US’ corresponding legislation and regulations impacts:

- Australian Government, industry, higher education and research sector entities that import controlled goods and technology from the UK and US;
- Australian Government, industry, higher education and research sector entities that export DSGL controlled goods and technology; and
- Australian Government, industry, higher education and research sector entities who collaborate internationally on controlled goods and technology.

Options 2A and 2B are expected to impact:

- Australian Government, industry, higher education and research sector entities within Australia that include foreign nationals with access to DSGL goods and technology; and

- Australian citizens and permanent residents who provide DSGL services in relation to controlled goods and technology to foreign persons, whether in Australia or elsewhere.

Option 2A and 2B also affect entities already captured under **Option 1** and are discussed further below. The exceptions included in **Option 2A** would reduce the number of entities affected, as detailed in **Question 3**.

Vignettes: sectors of the Australian economy affected

The Australian Government has developed a series of vignettes (included at **Appendix 4**) to examine the impact of each option on the following entity types:

1. An Australian business importing US controlled goods and technology from the US.
2. An Australian business exporting controlled DSGL technology to the UK.

3. An Australian business exporting controlled DSGL technology to non-AUKUS international partners.
4. An Australian business re-exporting UK and US controlled technology.
5. An Australian business producing dual-use goods locally.
6. An Australian start-up and research organisation collaborating with US counterparts on controlled technology.

7. An Australian start-up and higher education institution undertaking research in Australia.
8. An Australian employee providing DSGL services to foreign persons.

Question 5 contains further exploration of the impact of the proposed changes on stakeholders.

Part 2: Types of impacts incurred by Australian sectors

The impacts are categorised as quantifiable direct and indirect costs, as outlined in Image 5. The remaining unquantified impacts are discussed qualitatively.

Image 5: Quantified costs and benefits (cost reduction) at a glance

	Option 1 Status quo	Option 2 Amend legislation	Quantified impacts
 Permit Processing Delay	Exports of controlled goods and technology from the US require a licence, which lengthens the transaction process, leading to payment delays and driving up working capital requirements.	Exports of controlled goods and technology from the US no longer require a licence, increasing transaction speed and lowers working capital requirements.	Reduction in working capital costs passed on to Australian importers due to reduction in permit processing time.
 Regulatory Compliance Burden	Australian exporters sending goods to the US or UK needs to apply for a permit, which represents a staff resourcing cost for businesses.	Australian exporters no longer need to apply for export permits when trading within AUKUS. Subset of foreign nationals working or undertaking research in Australia may need to apply for a Deemed Supply permit before accessing controlled DSGL technology.	Reduction in regulatory compliance burden from reduced export permit requirements when trading with the UK and the US. Increase in regulatory compliance burden with new deemed supply permit requirements.
 Regulator Cost Impacts	DEC incurs staffing costs to process applications.	Increased application due to new controls, but this is offset by decreased permit requirements when trading with the UK and the US. Additional funding required for outreach, educational activities and answering enquiries. Additional capital investment for ICT systems and new operating process.	Increase in resourcing costs for DEC.

Quantified costs and benefits

Each option’s cost and benefit findings are reported using quantification categories (instead of standalone impact types) to protect the underlying sensitive data. Similarly, the regulatory burden measurement costs are

not disaggregated by sector to protect the underlying sensitive data.

The types of quantified impacts, the expected impact on Australian entities and the quantification categories are outlined in Table 4.

Table 4: Summary of impacts

Impact categorisation	Type of impact	Nature of the impact
<i>Permit Processing Delay</i>	Reduction in working capital costs passed on to Australian importers due to reduction in permit requirements	Australian importers benefit from reduced working capital costs due to a reduction in permit requirements under Option 2A and Option 2B . This will impact government, industry, higher education and research sector stakeholders dealing with controlled goods and technology.
<i>Regulatory Compliance Burden</i>	Increase in regulatory compliance burden associated with new export controls	Permits will be required for deemed supply, re-supply and DSGL services. The impact is present for Option 2A and Option 2B , however, the scale of the impact is significantly reduced by the exceptions under Option 2A . This will impact government, industry, higher education and research sector stakeholders dealing with controlled goods and technology.
<i>Regulatory Compliance Burden</i>	Reduction in regulatory compliance burden associated with reduced export permit requirements for trade with the UK and US	Permits for trading of controlled goods and technology among and between the AUKUS partners are no longer required for Option 2A and Option 2B , eliminating the effort associated with the application process. This will impact government, industry, higher education and research sector stakeholders dealing with controlled goods and technology.
<i>Regulator Cost Impacts</i>	Change in DEC resourcing	DEC will process new deemed supply, re-supply and DSGL services permits. Capital investment for ICT systems and new operating process development will be required. There will be a reduction in resources required for permits for the trade of controlled goods and technology to the UK and the US. Outreach and education will be required to support Australian entities to understand the changes to export controls.



The following analysis provides a more detailed explanation of the sectors in the Australian economy impacted, the type of impact and the costs assessment. It considers:

- Quantifiable and direct benefits
- Quantifiable and direct costs
- Quantifiable and indirect benefits
- Unquantifiable and direct costs
- Unquantifiable and indirect costs
- Unquantifiable and indirect benefits

Each quantifiable section outlines the methodology, data and assumptions underpinning the analysis.

Quantifiable and direct benefits

Reduction in regulatory compliance burden from reduction in export permits for trade between AUKUS partners

Under **Option 2A** and **Option 2B**, permits to export controlled goods, software and technology between the AUKUS partners are no longer required. This will eliminate the application process and the associated effort, as outlined in Table 5.

Table 5: Quantifiable and direct benefits methodology, data and assumptions

Methodology	- The number of permits issued for controlled goods, software and technology for export or supply from Australia to the UK and US are multiplied by the hourly wage rate and average effort required to conduct a self-assessment, permit application, and subsequent monitoring and compliance actions.
Data	- The compliance effort required is based on service provider experience in assisting entities to comply with export permit application processes. - The hourly wage rate is based on the average hourly ordinary time cash earnings across all occupations, published in the ABS Employee Earnings and Hours data series, and scaled up by 75% to account for on-costs and overheads. This equates to AUD\$79.63 per hour. ⁴² - The number of permits issued for controlled goods exported from Australia to the UK and the US is based on analysis of DEC's unit record data.
Assumption	- While the number of permits issued for controlled goods exported from Australia to UK and US has been growing steadily, it is conservatively assumed that the number of permits issued annually would remain at the 2021-22 volume over the forward 10-year period. - This provides a lower reduction in costs over time than would be demonstrated if data followed the alternative of permits growing based on the current trend.
Difference between Options 2A and 2B	- There is no difference between Options 2A and 2B for this benefit.

⁴² Department of Prime Minister and Cabinet, 'Regulatory Burden Framework.'

Quantifiable and direct costs

Increase in the regulatory compliance burden

Under the proposed **Options 2A** and **2B**, there would be an increase in the regulatory compliance burden, as outlined in Table 6. For example, certain foreign nationals working or undertaking research in Australia would need to apply for a deemed supply permit before they can access controlled DSGL technology as part of their employment or research. This will increase the regulatory compliance burden for entities they work or collaborate with and will directly create costs.

Table 6: Quantifiable and direct costs methodology, data and assumptions

<p>Methodology</p>	<p>The potential population impacted by the proposed legislative amendments is determined by the number of foreign nationals in sectors and occupations who could access DSGL technology. For example, a marketing professional at a cyber security company is unlikely to be included simply because of the industry they work in. Depending on the option, the size of the workforce impacted is further reduced by exceptions, as detailed in Question 3.</p> <ul style="list-style-type: none"> - This cohort of affected people is then multiplied by the hourly wage rate and average effort required to conduct a self-assessment, permit application, and subsequent monitoring and compliance actions. - The US experience has been considered to determine the number of people impacted, with adjustments made to account for different economy sizes.
<p>Data</p>	<p>The 2021 Census data informs the likely workforce that could be affected, including the effect of exceptions – counting persons and place of usual residence. The sectors and occupations considered in scope are listed in Appendix 5.</p> <ul style="list-style-type: none"> - The compliance effort required is based on service provider experience in assisting US entities to comply with deemed export permit application processes in the US. - The hourly wage rate is based on the average hourly ordinary time cash earnings across all occupations, published in the ABS Employee Earnings and Hours data series, and scaled up by 75% to account for on-costs and overheads. This equates to AUD\$79.63 per hour.
<p>Assumptions</p>	<ul style="list-style-type: none"> - Given the specific definition of when a deemed supply would take place and the commercial value of the controlled data, it is expected the majority of organisations would already have safeguards in place to minimise access to controlled DSGL technology to only relevant personnel with a need to know. - Due to the limitations of the 2021 Census data, it is impossible to narrow down to the specific personnel who would actually have access to controlled data. An assumption is applied that only 5.8% of the identified workforce and students would actually meet the threshold of deemed supply. The 5.8% is based on: <ul style="list-style-type: none"> - The US experience, where they have on average 2,200 applications annually for deemed export licences. This data is based on private briefings and published data from the US Department of State's Directorate of Defence Trade Controls and the US Department of Commerce's Bureau of Industry and Security. - The conversion of the number of US deemed export licences to account for the size of the Australian economy. When converting the number of deemed export licences issued in the US, it translates to approximately 150 applications per year for Australia, or 5.8% of the identified cohort in Australia, meeting the threshold for deemed supply. This takes into account that Australia's economy is 1/15th the size of the US economy. - Sensitivity analysis, given the uncertainty around how comparable the US experience is for Australia. The sensitivity analysis is included at the end of this chapter to illustrate the impact of higher application rates to the overall analysis. - The central estimate is considered a conservative assumption (and may be an overestimate) because this would lead to a greater number of deemed supply permits per capita when adjusted to the relative size of the US and Australian defence industry.⁴³ The number of deemed supply permits may be lower, leading to a reduction in the regulatory burden and a reduction in DEC permit processing costs.

43 The US defence industry 2022 annual revenue exceeds AUD\$1 trillion, more than 25 times of Australia's defence industry's AUD\$42 billion of annual revenue over the same period.
Data sourced from: IBISWorld. June 2023. 'Defence in Australia- Market Size, Industry Analysis, Trends and Forecasts (2023-2028).' ANZSIC O7600. Accessed 21 October 2023, <https://www.ibisworld.com/au/industry/defence/589/#IndustryStatisticsAndTrends>; PriceWaterhouseCoopers. 2022-23. 'PwC's Global Aerospace and Defense: Annual Performance and Outlook.' Accessed 21 October 2023, [https://www.pwc.com/us/en/industries/industrial-products/library/aerospace-defense-review-and-forecast.html#:~:text=The%20aerospace%20and%20defense%20industry,%25\)%2C%20according%20to%20PwC%20analysis](https://www.pwc.com/us/en/industries/industrial-products/library/aerospace-defense-review-and-forecast.html#:~:text=The%20aerospace%20and%20defense%20industry,%25)%2C%20according%20to%20PwC%20analysis).



Difference between Options 2A and 2B

The 2021 Census data has been used to determine the proportion of the workforce in sectors and occupations in scope who qualify for the exceptions listed under **Option 2A**. Specifically, those who were born in an FCL country and the proportion working for the Australian Government. This equates to approximately 20% of the population identified.

The 2021 Census data has been used to supplement Department of Education statistics to identify the proportion of overseas postgraduate research students who are studying at the doctorate level, and therefore likely to not qualify for the fundamental research exception under **Option 2A**. This equates to approximately 4% of the population identified.

Increase in DEC resourcing

Under **Option 2A** and **Option 2B**, to introduce new deemed supply, re-supply and DSGL services permit requirements, capital investment for ICT systems and operating process development will be required, as outlined in Table 7.

Additional staffing will be required to undertake outreach and educational activities. These activities will create awareness in relevant sectors and support informed compliance. Operational staffing levels will also need to be adjusted to process the new permit type applications. This is offset by a reduction in permits for exports to the UK and the US, as they would no longer be required.

Table 7: DEC resourcing methodology, data and assumptions

<p>Methodology</p>	<ul style="list-style-type: none"> - DEC’s existing staffing level is first split between fixed and variable costs, with the disaggregation based on whether the role is of a policy or operational nature. The total variable cost is then divided by the most recent number of applications processed to produce an average processing cost per permit. - This average processing cost per permit is multiplied by the total number of permit applications expected to produce the regulator’s new variable costs. - A one-off capital investment for ICT systems is included in the first year. - Additional funding for outreach, education and compliance is based on the geographical distributions of employees, researchers and students who may have access to controlled DSGL technology. <p>DEC has provided analysis and data on the additional costs it expects to incur under Option 2A and 2B.</p>
<p>Data</p>	<ul style="list-style-type: none"> - DEC’s existing staffing level and the volume of applications processed has been used to estimate the average variable cost per application. This variable cost estimate includes the existing level of outreach and education activities but is taken before top-up funding for additional activities to cover the new permit types. - DEC provided the estimate for the cost of one-off capital investment for ICT systems. - The number of expected new permit applications are based on preceding estimates on the regulatory compliance burden for these permits. - DEC provided the existing outreach schedule and staffing profile.
<p>Assumptions</p>	<ul style="list-style-type: none"> - Frequency and effort required per outreach type is based on current practices. This is adjusted by the increase in the population needing awareness of the new obligations and those who do not need to lodge an application. <ul style="list-style-type: none"> - DEC will visit all capital cities and regional town centres where a reasonably sized in scope population is identified. This increases the number of outreach days by approximately 2.5 times what is currently undertaken. - Additional effort to respond to the surge in enquiries for new permit types in the first year is included. The initial surge is subsided to two thirds over the remaining forward period. - The cost of a recent national advertising campaign for another government program is used as a proxy to inform the cost of a national media campaign, which would last three years.
<p>Difference between Options 2A and 2B</p>	<p>The proportion of the workforce and students eligible for exceptions under Option 2A reduces the number of applications received and reduces required DEC resourcing.</p>

Quantifiable and indirect benefits

Reduction in working capital costs passed on to Australian importers due to reduction in permit processing times

The export of controlled goods and technology from the US requires a licence. This means that goods or technology can take longer to be delivered. Payments are made later, which increases the supplier's working capital requirements. While the supplier is not based in Australia, this cost is passed on to Australian end-users, so this cost is included in this analysis.

Under the proposed **Options 2A** and **2B**, these costs will reduce and can therefore be reflected as net benefit. This is outlined in Table 8.

Table 8: Quantifiable and indirect benefits methodology, data and assumptions

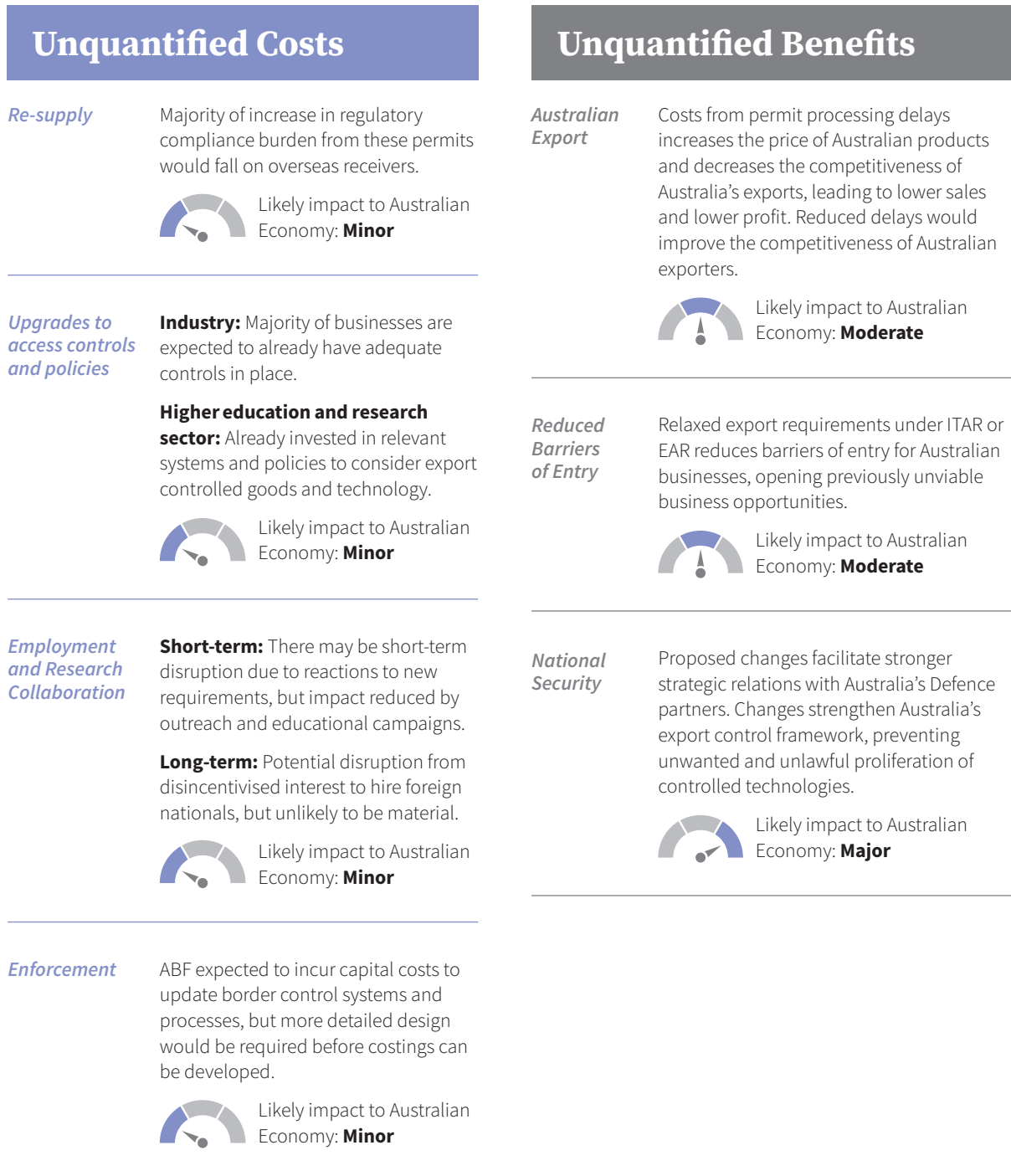
Methodology	- The value of annual controlled goods exports from the US to Australia is multiplied by the relevant authority's average permit processing times in days, divided by 365, and then multiplied by the average US business borrowing rate.
Data	<ul style="list-style-type: none"> - The value and permit processing time of controlled exports from the US to Australia are based on private briefings and published data from the US Department of State's Directorate of Defence Trade Controls and the US Department of Commerce's Bureau of Industry and Security. - The US business borrowing rate is based on the prime bank loan rates from the US Federal Reserve. This is considered an appropriate borrowing rate given the majority of controlled imports into Australia are sourced from the major US defence contractors with above average credit ratings. <p>This is a conservative data point for this analysis. If the suppliers' credit ratings deteriorate, it will increase the cost of borrowing, which will increase the costs of Option 1 and increase the benefits of Options 2A and 2B.</p>
Assumption	- While the importing of controlled goods from the US has grown steadily, it is conservatively assumed that trade value would remain steady at the 2021-22 value over the forward 10 years. This produces a lower reduction in costs over time than would be demonstrated if data followed the alternative of trade value growing based on current trend.
Difference between Options 2A and 2B	There is no difference between Options 2A and 2B for this benefit.



Unquantifiable costs and benefits

Some costs and benefits are not quantified, generally due to the indirectness of the impact or the lack of detailed data to accurately model their impacts. This is illustrated in Image 6. These costs and benefits are discussed in more detail in subsequent sections.

Image 6: Unquantified costs and benefits at-a-glance



Unquantifiable and direct costs

Increase in regulatory compliance burden

The majority of the regulatory compliance burden for the new deemed supply and re-supply controls introduced under **Options 2A** and **2B** will fall on overseas receivers of controlled exports or supplies from Australia. This Impact Analysis assesses impact on the Australian economy, particularly on domestic stakeholders in Australia's industry, higher education and research sectors. Overseas receivers' compliance burden is not within this scope.

While this compliance burden may have flow-on impacts to the attractiveness of Australian products, the effect is expected to be negligible due to the specialised nature of

controlled goods and technology and the precedent of similar US controls that are already applied extraterritorially.

Australian exporters are expected to update their contractual arrangements and undertake the necessary due diligence to inform their overseas customers to comply with the proposed legislation. This impact of this is expected to be negligible on the overall compliance effort. Under existing legislation, Australian exporters are already required to undertake due diligence on the end-use and end-user of their controlled exports before an export permit is issued.

The impact of this burden on the Australian economy is to be **minor** for **Option 2A** and **2B**.

Unquantifiable and indirect costs

Upgrades to system access control and operational policies

Industry: While some industry partners may invest in systems and policies to limit the unintentional transfer of controlled DSGT technology internally, the majority of businesses are expected to already have adequate controls due to the commercial value of controlled DSGT technology.

Given the relatively low cost of compliance, it would be more cost effective for businesses to go through the permit application process when inadequate access controls are in place.

Higher education and research: During stakeholder consultations, the higher education and research sectors confirmed they have already invested in relevant systems and policies to consider export control for goods and technology in their research and teaching activities. While the new controls would lead to higher compliance requirements, this is unlikely to require additional material investment by the higher education and research sectors on their systems and policies.

The impact of this burden on the Australian economy is likely to be **minor** for **Option 2A** and **2B**.

Employment and research collaborations

There may be short-term disruption to the labour market as employers, employees and researchers interpret and respond to the new permit requirements.

Outreach and education to inform the public of the new requirements and minimise confusion would limit the magnitude and duration of this disruption. Entities are able to restrict access to DSGT technology, conduct a self-assessment that a permit is not required, seek advice from DEC or apply for a permit – the associated compliance burden is addressed in this Impact Analysis.

Disruption caused by permit refusal will prevent or stop activities that will prejudice Australia's national security, defence and international relations. This will burden

entities, individuals, projects and activities that seek to do Australia harm. This is an intended outcome of the proposed legislation and is not considered a cost.

Long-term disruption caused by the industry, higher education and research sectors losing incentive to hire or collaborate with foreign nationals, and vice versa, is a risk. This risk is unlikely to be material. Under the preferred option, the cohort of affected foreign nationals consists less than 0.13% of Australia's workforce, or 2% of postgraduate research students in Australia, and employers may still gain authorisation through a permit.

The potential long-term impact of this is likely to be mitigated by permit-free recruitment and collaboration with UK and US entities and nationals.

The impact of this burden on the Australian economy is likely to be **minor** for **Option 2A** and **2B**.

Enforcement

The ABF is expected to incur capital costs to update Australia's border control systems and processes. These costs are currently unquantified. Efficiencies could be gained by aligning this update to other pending changes to the systems and processes. However, more detailed design and costing is required before the impact can be quantified.

The permit-free export of controlled goods to the UK and US will, in theory, reduce ABF intervention effort. This reduction is unlikely to be material as other existing customs clearance checkpoints remain unchanged.

The Australian Federal Police (AFP) is expected to incur costs to update their processes and undertake operations to enforce the new legislation. Enforcement action on noncompliance is not within the scope of this Impact Analysis and is not estimated.

The impact of this burden on the Australian economy is likely to be **minor** for **Option 2A** and **2B**.



Unquantifiable and indirect benefits

Australia's national security

The proposed changes will enable Australia to carve out stronger strategic relationships with its defence partners. The changes will strengthen Australia's export control framework, preventing the unwanted and unlawful proliferation of controlled goods and technologies that would prejudice Australia's defence and security interests.

Closing the gaps in Australia's export control framework and achieving a comparable status with the US export control framework is a key step to delivering the defence and security outcomes intended under AUKUS. This includes faster access to critical technologies and the capabilities that will underpin Australian security in the Indo-Pacific.

The impact of this benefit on the Australian economy is likely to be **major** for **Option 2A** and **2B**.

Increase in Australian export competitiveness due to reduction in permit processing times

Permit processing delays increase the price of Australia's products and decrease the competitiveness of Australia's exports. Delays lead to reduced sales and lower profit, including when the margin per unit sold maintains the same rate.

Faster permit processing times will improve supply chain performance and improve services. Efficiency will create greater certainty on sourcing goods and technology from Australian sovereign suppliers, improving Australian industry's competitiveness internationally.

The impact of this benefit on the Australian economy is likely to be **moderate** for **Option 2A** and **2B**.

Reduced barrier of entry for Australian industry, higher education and research sectors into UK and US markets

Relaxed export requirements for Australian controlled goods and technology into the UK or US under ITAR or EAR reduces barriers of entry for Australian businesses. This opens previously unviable business opportunities in the UK and US to Australian industry.

The streamlined process to collaborate with researchers in the UK and US could lead to increased research collaboration opportunities, greater research outcomes and reduced barriers to technology transfer between AUKUS partners.

This could provide new opportunities for the Australian industry, higher education and research sectors to expand into wider markets and increase their competitive advantage over the rest of the world.

The impact of this benefit on the Australian economy is likely to be **moderate** for **Option 2A** and **2B**.

Part 3: Costs assessment

Each option's cost and benefit findings are reported using quantification categories (instead of individual impact types) to protect sensitive data. The options are assessed individually and then a comparison is made.

Each option's costs and benefits are estimated individually over a 10-year period. This includes the cost of maintaining

current regulatory settings and continuing regulatory burdens under **Option 1**. The costs of **Options 2A** and **2B** are presented as a standalone figure. The net impact (cost savings) in comparison to the status quo is estimated by subtracting the costs of **Option 2A** and **Option 2B** from the cost of **Option 1**.

Option 1 – status quo

Option 1 represents the status quo where existing legislation would continue without any changes. The net impact of adopting this option compared to the status quo is nil.

The net impact of this option to Australia is nil, however it imposes a burden on the Australian Government, industry, higher education and research sectors. This is illustrated in Table 9. The costs of the status quo are established to measure cost savings – it forms the baseline for estimating the benefits.

The quantified costs of **Option 1** will have a net present value of **AUD\$706 million** on the Australian economy over a 10-year period.

Table 9: Quantified costs of Option 1

Quantified costs of Option 1			
Costs - Discounted to today's dollar (\$ million)	Year 1	Year 2-10 Avg	Total
Permit Processing Delay	\$84.8	\$61.4	\$637.4
Regulatory Compliance Burden	\$1.4	\$1.2	\$12.2
Regulator Cost Impacts	\$6.6	\$5.6	\$56.7
Total	\$92.8	\$68.2	\$706.3

Notes: Figures may not sum to total due to rounding. A positive figure indicates a quantified cost to the Australian economy. Figures in the '2-10 Avg' column are discounted. Permit processing delays relate to controlled goods and technology exported from the US where Australia is the end-user.

Option 2A – amend Australia's export legislation with complementary exceptions

Option 2A assumes that the proposed legislative changes, as defined in this Impact Analysis, are implemented with defined complementary exceptions which Australian industry, higher education and research sectors can utilise to avoid a requirement for export control permits.

The cost that **Option 2A** will impose on the Australian Government, industry, higher education and research sectors is outlined in Table 10.

The quantified costs of **Option 2A** will have a net present value of **AUD\$93 million** on the Australian economy over a 10-year period.

Benefits of Option 2A in comparison to Option 1

Table 11 represents **Option 2A**'s benefit compared to the status quo. This measures the difference, or reduction in costs, of **Option 2A** over **Option 1**.

Option 2A will have a benefit on the Australian economy of **AUD\$614 million** over a 10-year period, discounted to today's dollar.

Table 10: Quantified costs of Option 2A

Quantified costs of Option 2A			
Costs - Discounted to today's dollar (\$ million)	Year 1	Year 2-10 Avg	Total
Permit Processing Delay	\$-	\$-	\$-
Regulatory Compliance Burden	\$1.9	\$0.2	\$4.1
Regulator Cost Impacts	\$25.3	\$7.0	\$88.3
Total	\$27.3	\$7.2	\$92.5

Note: Figures may not sum to total due to rounding. A positive figure indicates a quantified cost to the Australian economy. In the licence-free environment, permit processing delays for US controlled goods and will no longer be incurred.

Table 11: Quantified benefits of Option 2A

Quantified benefits of Option 2A			
Benefits - Discounted to today's dollar (\$ million)	Year 1	Year 2-10 Avg	Total
Permit Processing Delay	\$84.8	\$61.4	\$637.4
Regulatory Compliance Burden	-\$0.5	\$1.0	\$8.1
Regulator Cost Impacts	-\$18.8	-\$1.4	-\$31.7
Total	\$65.5	\$60.9	\$613.8

Note: Figures may not sum to total due to rounding. A positive figure indicates a cost reduction in comparison to Option 1, while a negative figure indicates a cost increase.

Option 2B – amend Australia’s export legislation without complementary exceptions

Option 2B assumes that the proposed legislative changes, as defined in this Impact Analysis, will be introduced without defined complementary exceptions for the industry, higher education or research sectors.

This option will negatively impact permit processing and regulatory compliance costs. This will require the Australian Government increase regulator funding and will impose compliance costs on Australian industry, higher education and research sectors.

Table 12 represents the cost **Option 2B** would impose on the Australian Government, industry, higher education and research sectors.

The quantified costs of **Option 2B** will have a net present value of **AUD\$102 million** on the Australian economy over a 10-year period.

Benefits of the Option 2B in comparison to Option 1

Table 13 represents **Option 2B**'s benefit compared to the status quo. This measures the difference, or the reduction in costs, of **Option 2B** over **Option 1**.

Option 2B will have a benefit on the Australian economy of **AUD\$605 million** over a 10-year period, discounted to today's dollar.

Compared to **Option 2A**, **Option 2B** has a larger regulatory compliance burden and requires greater DEC funding to process the additional applications without exceptions.

Option 2B still provides a significant net benefit over **Option 1** but costs AUD\$9 million more than **Option 2A** due to the lack of exceptions.

Table 12: Quantified costs of Option 2B

Quantified costs of Option 2B			
Costs - Discounted to today's dollar (\$ million)	Year 1	Year 2-10 Avg	Total
Permit Processing Delay	\$-	\$-	\$-
Regulatory Compliance Burden	\$3.9	\$0.6	\$9.3
Regulator Cost Impacts	\$26.9	\$7.3	\$92.5
Total	\$30.8	\$7.9	\$101.8

Note: Figures may not sum to total due to rounding. A positive figure indicates a quantified cost to the Australian economy.

Table 13: Quantified benefits of Option 2B

Quantified benefits of Option 2B			
Benefits - Discounted to today's dollar (\$ million)	Year 1	Year 2-10 Avg	Total
Permit Processing Delay	\$84.8	\$61.4	\$637.4
Regulatory Compliance Burden	-\$2.5	\$0.6	\$2.9
Funding for Regulator	-\$20.3	-\$1.7	-\$35.8
Total	\$62.0	\$60.3	\$604.5

Note: Figures may not sum to total due to rounding. A positive figure indicates a cost reduction in comparison to Option 1, while a negative figure indicates a cost increase.

Part 4: Sensitivity analysis

There is limited data on the number of applications that may be received due to the nature of the proposed legislation. To understand the impact of changes to this assumption on the benefits, a sensitivity analysis is required.

Table 14 below examines the change (reduction) in benefits as the assumed number of people impacted increases.

Reasonably robust proxy data is used to identify the foreign national population in Australia that may be affected. An assumption is required to determine the actual number of individuals who may have access to controlled technology that reaches the threshold of deemed supply.

The assumptions for the regulatory burden on deemed supply notes the Impact Analysis' central assumption, that 5.8% of the identified cohort will meet the threshold for deemed supply and will require a permit. This assumption is based on the US experience and is used to estimate the Impact Analysis' quantified benefits.

When the assumptions are shifted to include a larger pool of impacted individuals, the benefits of the proposed legislation change remain positive. This reflects that the majority of the benefits are derived from the reduction in permit processing delays. As the permit application rate increases, small reductions in the benefits are observed. The benefit reduction is attributed roughly evenly to regulator cost increase and the increase in compliance burden.

Table 14: Sensitivity analysis

Sensitivity Analysis		
Benefits - Discounted to today's dollar (\$ million)	Option 2A	Option 2B
5.8% application rate (Central Estimate)	\$613.8	\$604.5
10% application rate	\$608.5	\$592.4
20% application rate	\$595.7	\$563.6
30% application rate	\$583.0	\$534.8
40% application rate	\$570.2	\$506.0
50% application rate	\$557.5	\$477.1

Note: A positive figure indicates a cost reduction in comparison to Option 1.

Discount rate

A sensitivity analysis on the impact of discount rates 3% and 10% with the results is illustrated in Table 15.

Table 15: Discount rate

Discount Rate		
Benefits - Discounted to Today's Dollar (\$ million)	Option 2A	Option 2B
3% discount rate	\$749.2	\$738.3
7% discount rate (Central Estimate)	\$613.8	\$604.5
10% discount rate	\$534.9	\$526.6

Note: A positive figure indicates a cost reduction in comparison to Option 1.



QUESTION 5

Who did you consult and how did you incorporate their feedback?

Purpose and objectives of consultation

The purpose of consultation was to ensure legislative amendments to the DTC Act were fit for purpose and contributed to achieving the Australian Government's objectives with respect to strengthening Australia's export control framework.

Affected stakeholder groups

In the absence of a country exemption from US export control licencing requirements and with no change to the status quo for Australia's export control legislation, no Australian or foreign national stakeholders are directly impacted by the lack of controls to regulate what the US terms 'deemed exports', 're-exports', 'deemed re-exports', 're-transfers' and the 'provision of defence services'.

Indirectly, every Australian is impacted through both the economic and national security consequences that arise without these controls.

If the Australian Government were to address **Policy Problem 2**, that is, the gaps in Australia's export control framework, the stakeholders that would be impacted are:

- Australian Government entities and Australian industry, research and higher education sector entities

and any Australian based individual seeking to supply DSGL technology to a foreign national within Australia;

- Australian Government entities and Australian industry, research and higher education sector entities and any Australian based individual who has been issued an Australian export permit for the export of DSGL controlled goods and technology;
- Any foreign national recipient of DSGL controlled goods and technology imported from Australia; and
- Australian Government entities, Australian industry, research and higher education sector entities and any Australian based individual seeking to provide a DSGL service, including training, or DSGL technology to foreign persons, whether in Australia or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarisation, destruction, processing or use of goods or technology controlled in Part 1 of the DSGL.

Method of consultation

In order to understand the potential distributional impacts of the proposed measures across the community, Defence developed a consultation strategy that is underpinned by six principles to guide and support quality consultation. These principles (Table 16) were based on the established consultation approaches in the Australian Public Service.⁴⁴ The consultation strategy is included below at Table 17.

⁴⁴ Department of Prime Minister and Cabinet. 22 May 2023. 'Best Practice Consultation.' Office of Impact Analysis. Accessed 6 September 2023, <https://oia.pmc.gov.au/resources/guidance-oia-procedures/best-practice-consultation>

As exemplified in the consultation strategy, Defence undertook multi-staged consultation. This initially focused on confidential or targeted consultation with export control experts and peak bodies across the industry, higher education and research sectors, and was followed by public consultation.

The confidential and targeted consultation included in-person and online briefings (using collaboration tools such as TEAMS and WebEx) and engagements to assess the problems identified in **Question 1**, agree objectives and determine options to explore that would address the stated problems. As part of this consultation, Defence also released information, issues papers and exposure drafts of policy proposals to targeted stakeholders familiar with export controls, to elicit detailed comments and advice on how the policy will work in practice to inform drafting of legislation.

Public consultation of the Exposure Draft of the DTC Bill was subsequently undertaken and delivered through Defence’s website, where members of the public were invited to make written submissions. To support the accessibility of the public consultation process, the Explanatory Memorandum accompanied the Exposure Draft to provide an overview of the proposed reforms and rationale of the drivers behind the proposed reforms. The website was open for submissions from Tuesday 7 November – Friday 17 November 2023. As part of the public consultation, Defence also held in-person and online briefings to address questions and support stakeholders to understand the proposed legislative amendments and any impacts they may have on them.

Table 16: Consultation principles

<i>Purposeful:</i>	Consultation is appropriately planned to identify its purpose, scope, stakeholders, risk, activities, resources, and timeframes.
<i>Broad Based:</i>	Consultation is broad to ensure diversity of stakeholders affected by the changes is considered.
<i>Timely:</i>	Timeframes for consultation are realistic to allow stakeholders enough time to provide a considered response.
<i>Accessible:</i>	Consultation is online and in-person to enable stakeholders can readily contribute to consultation matters.
<i>Transparent:</i>	Consultation is transparent and comprehensive, engaging stakeholders from the earliest possible stage to participate in the process and ensuring outcomes visible.
<i>Evaluate and Review:</i>	The effectiveness of consultation is evaluated and reviewed to ensure methods are fit for purpose and engage all views, and changes are made as required.

Table 17: Consultation strategy

Type	Objective	Who	Form	When
Confidential consultation	To determine the problem, agree Australian Government objectives and determine the options to explore to address the problem.	<ul style="list-style-type: none"> - Australian Government - AUKUS partners 	In-person and online early-stage consultation and engagement with targeted stakeholders to assess the problems, agree objectives, and determine options to explore that would address the problem.	January-May 2023
Targeted consultation	<p>To understand the scale of the problem and consequential impact.</p> <p>To gather new ideas, collect evidence and factual data, validate assumptions to inform development of policy options and to clarify possible impacts of proposals on the wider community and refine options.</p>	<ul style="list-style-type: none"> - Industry, higher education and research peak bodies - Universities - Small-medium enterprises - Defence primes - Federal government departments and agencies - State and territory government departments and agencies - AUKUS partners - Individuals who export goods or technology controlled on the DSGL 	<p>Release of information, issues papers, and exposure drafts of policy proposals to allow stakeholders to provide more detailed comments and advise on how the policy proposals will work in practice to inform drafting of legislation.</p> <p>In-person and online consultations using online collaboration tools such as TEAMS, WebEx.</p>	June-October 2023
Public consultation	To obtain feedback on the proposed legislative amendments and Explanatory Memorandum to ensure final legislation is fit for purpose and minimise regulatory burden on affected stakeholders.	<ul style="list-style-type: none"> - Global 	<p>Public release on external website of Exposure Draft of draft DTC Bill and Explanatory Memorandum.</p> <p>In-person and online consultations using online collaboration tools such as TEAMS and WebEx.</p>	7-17 November 2023

Consultation process

In June 2023, Defence commenced targeted consultation with representatives from peak industry, higher education and research sector bodies. This initially involved Defence briefing select representatives from these bodies on the proposed establishment of an export control licence-free environment among and between AUKUS partners. It also included a briefing on the consequential legislative requirement for Australia to establish an export control regime that is at least comparable to that of the US in order to access a national exemption from the US.

As outlined in **Question 2**, there have been a number of unsuccessful attempts over decades to streamline technology transfer between Australia and the US. All stakeholders briefed acknowledged the significance of the proposal by the US to provide Australia with a national exemption from US export control licencing requirements.

All stakeholders also noted that, should the Australian Government commit to enhancing our export control framework, it would be important that legislative changes be fit for purpose in the Australian context. Defence committed to consulting affected stakeholders on possible implementation options.



Discussion Aid - Australia's Protective

Environment for Technology and Information:

Strengthening Australia's Export Control legislation

In response to the initial targeted consultation, Defence developed a Discussion Aid titled 'Australia's Protective Environment for Technology and Information: Strengthening Australia's Export Control Legislation' (Image 7). This Discussion Aid outlined possible implementation options to allow stakeholders to provide more detailed comments and advice on how the potential legislative amendments would work in practice.

The purpose of the Discussion Aid was to:

- 1 Communicate the legislative amendments that would be required to Australia's export control framework to access a national exemption from US export control licencing requirements.
- 2 Test assumption to inform development of policy options.
- 3 Gather new ideas from stakeholders.
- 4 Collect evidence from stakeholders.
- 5 Clarify possible impacts of policy proposals with stakeholders.
- 6 Gather additional information to refine options.

The Discussion Aid was provided to government and peak industry, higher education and research sector bodies via email ahead of online and in-person briefings. In many cases, the Discussion Aid prompted stakeholders to provide written feedback and/or seek follow up briefings. The key responses provided by the government and peak industry, higher education and research sector bodies on the Discussion Aid are outlined in Table 18.

As part of the briefings undertaken at this stage in the consultation process, Defence sought to find those Australian entities or individuals who would be impacted by the possible introduction of new controls to regulate deemed supply, re-supply or DSSL services and would not receive any regulatory relief from the proposed AUKUS licence-free environment.

Defence sought assistance of the Department of Industry and Department of Education to ascertain whether any of their stakeholders may fit into this category. Defence also sought assistance from the peak industry, higher education and research sector bodies to obtain the same information to no avail. Defence subsequently analysed import and export data as well as census data in an attempt to discover entities or individuals who may import or export to certain markets and be only negatively impacted by the proposed legislative changes. Defence was unable to identify entities who would only experience increased regulatory burden without any relief.

Image 7: Discussion Aid



Table 18: Feedback on the Discussion Aid

	General comment	Feedback informing policy development and legislative amendments
Government	<p>It is in Australia’s national interest to introduce new legislation to address known gaps in Australia’s export control framework that are resulting in the unlawful proliferation of controlled technology within Australia.</p> <p>Australia should amend its export control framework to be as assessed as comparable to the US, to access the country-based exemption.</p>	<p>All departments and agencies involved in the export control permit assessment process must be sufficiently resourced.</p> <p>Commencement provisions and transition timeframes should not be shorter than six months to enable and support implementation across all affected stakeholders.</p>
Industry	<p>An export control exemption from the US, which alleviates licencing requirements for the ITAR and EAR, would be highly beneficial. The benefits of an AUKUS licence-free bubble would outweigh any increased regulatory burden domestically or with other countries.</p> <p>Companies intentionally design their business models to avoid having goods inadvertently captured under ITAR legislation (known as ‘ITAR taint’). Lesser quality goods from non-US countries are often purchased to avoid ITAR taint. A licence-free bubble would enable companies to acquire ITAR goods from the US without tainting their Australian sovereign technical data.</p> <p>Industry also welcomed a country-based exemption from UK export control licencing requirements.</p>	<p>Any reporting requirements should not be any more onerous or detailed than current permit requirements.</p> <p>Defence must be sufficiently resourced to ensure processing timeframes for permits do not blow out.</p> <p>Defence must bolster outreach and education to support industry comply with any legislative changes.</p> <p>The ITAR/EAR include exceptions that reduce regulatory burden. Exceptions must be included in any legislative amendments considered by Australia.</p>
Higher education and research	<p>A licence-free bubble between AUKUS partners may mitigate a potential increase regulatory burden to the higher education and research sector. The sector emphasised that it will be important to understand how it would work practically in the legislation.</p>	<p>Defence must be resourced to ensure processing timeframes do not blow out.</p> <p>Defence must bolster outreach and education to support industry comply with any legislative changes.</p> <p>The ITAR/EAR include exceptions that reduce regulatory burden. Exceptions must be included in any legislative amendments considered by Australia.</p>



Feedback Aids – Legislative Exemptions for Industry, Higher Education and Research Sectors

In response to the feedback on the Discussion Aid and associated briefings, Defence created two Feedback Aids titled ‘Legislative Exemptions for Industry’ and ‘Legislative Exemptions for the Higher Education and Research Sectors’ (Image 8). These Feedback Aids outlined complementary exceptions that were being considered by the Australian Government for inclusion in the DTC Bill and was designed to obtain more detailed and specific comments and advice on how the potential exceptions would work in practice for impacted stakeholders.

The Feedback Aids were provided to affected stakeholders via email through peak industry, higher education and research sector bodies. Defence received written feedback from over 20 entities on the potential legislative exceptions from stakeholders.

The key responses provided by the peak industry, higher education and research sector bodies on the Feedback Aids are outlined in Table 19.

The purpose of the Feedback Aids was to:

- 1 Seek views on exceptions that could be introduced into legislation or legislative instruments.
- 2 Further test assumptions to inform development of legislation.
- 3 Gather new ideas.
- 4 Collect additional evidence to support inclusion of exceptions.
- 5 Clarify possible impacts of proposals and exceptions on the wider community.
- 6 Gather information to refine options.

Image 8: Feedback Aids

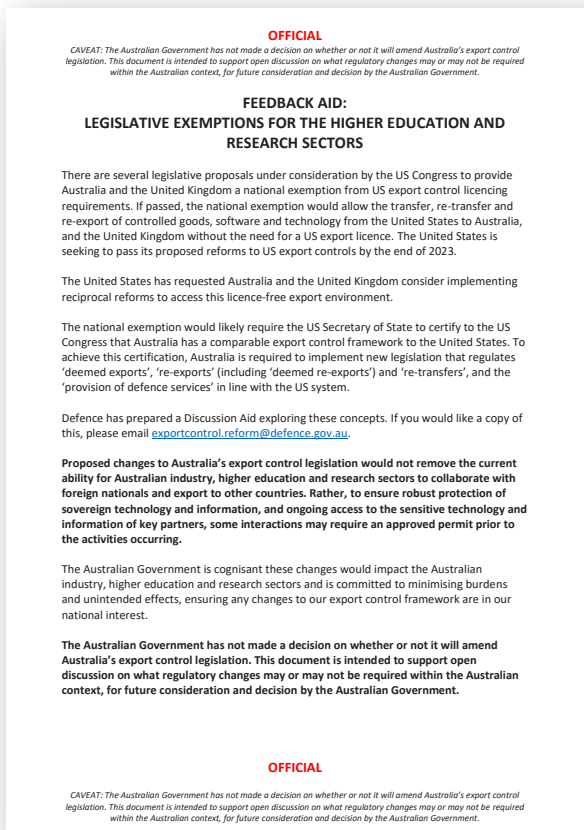


Table 19: Feedback on the Feedback Aids

	General comment	Feedback informing policy development and legislative amendments
Government	Exceptions would significantly reduce the administrative burden imposed by the new controls and reduce the impact on DEC.	National exemptions for the UK and the US should be included in the DTC Act and Customs PE Regulations. General exceptions could be included in either the DTC Act or DTC Regulation.
Industry	Exceptions would significantly reduce the administrative burden imposed by the new controls for Australian industry.	Requested exceptions for: <ul style="list-style-type: none"> • The provision of controlled DSGL technology where it is insignificant to the larger system such as in ‘build-to-print’ contracts. • Regular employees. • Employees who hold current security clearances. • Projects that related to an Australian Government defence contract and/or program. Recommended broadening definition of basic scientific research to include fundamental research. Proposed that Defence consider introducing project licences. Introduction of US-style exceptions must be supported by clear guidance to support usage.
Higher education and research	Exceptions would significantly reduce the administrative burden imposed by the new controls for Australian higher education and research sector. Exceptions must be fit for purpose for the Australian context.	Recommended amending the definition of basic scientific research to include fundamental research. The preferred definition for fundamental research would link research to ‘activities that ordinarily result in publishing’ or Technology Readiness Levels. Requested an exception for regular employees for both DSGL Part 1 (Munitions List) and Part 2 (Dual-Use List). Multiple stakeholders raised concerns that the engagement of PhD students, visiting scholars, adjuncts, unpaid staff, short-term contract staff, and post-doctoral researchers often do not meet the ITAR and EAR definition of a ‘regular employee’ and this should be considered in the Australian context. All definitions in the legislation must be clear and consistent to reduce the burden on research institutions.

Consultation on the Regulatory

Burden Costing Assessment

Defence undertook a Regulatory Burden Costing Assessment (**Question 4**) as part of this Impact Analysis to assess the regulatory impact of each of the options considered in this Impact Analysis. To confirm and validate assumptions, Defence undertook confidential consultation with stakeholders across government and peak bodies representing the industry, higher education and research sectors. This confidential consultation enabled Defence to undertake a systematic evaluation of the impacts of the proposals with stakeholders. The consultation was particularly important for validating broader effects on the community and economy, not just the immediate or direct effects on one group. All stakeholders supported the assumptions underpinning the assessment.



Incorporating consultation feedback into the drafting of legislation

After analysing the feedback provided by stakeholders on the Feedback Aids, Defence worked with the Office of Parliamentary Counsel to draft legislative amendments to the DTC Act throughout October and November 2023. Defence also worked closely across the Australian Government particularly with the Attorney General's Department, Australian Government Solicitor, and DFAT to ensure accuracy of definitions, especially for the complementary exceptions. For example, Australia does not have a legal definition for 'regular employees' that would have enabled Defence to directly adopt this concept from the US ITAR. Defence worked with legal experts to develop an equivalent exception to the 'regular employee' for the Australian context. Defence also incorporated the feedback provided by stakeholders throughout the consultation process that occurred from January through until October 2023.

As outlined in Tables 18 and 19, the dominant feedback provided by affected stakeholders related to the inclusion and scope of exceptions, with a focus on exceptions for 'employees', 'fundamental research' and 'build-to-print'. Defence evaluated the feedback and recommendations.

All stakeholders welcomed the proposal of an exception for 'employees'. The 'employees' exception exempts a foreign employee that is a citizen or permanent resident of a foreign country that is specified in the FCL (see **Appendix 3**) regardless of employment type or length. The higher education and research sector have expressed concern that foreign Higher Degree Research Students may be excluded from this exception, however this will depend on the employment structure and employment definitions used by the university that the student attends. Defence's analysis, however, demonstrated that most Higher Degree Research Students will not be impacted by the new provisions as the majority of this research falls within the definition of Fundamental Research.

All stakeholders agreed that the exception for Basic Scientific Research should be expanded to capture Fundamental Research. The Basic Scientific Research definition in the DSGL will be replaced with a definition similar to that in the ITAR for Fundamental Research.

Industry expressed a desire for an exception to cover 'build-to-print.' 'Build-to-print' occurs when a component of a DSGL good is produced from engineering drawings without any technical assistance. The component built would not enable the manufacturer to reverse engineer and make the complete DSGL good. This exception will be included in the DTC Regulation.

All exceptions sought by affected stakeholders to be included in the legislation will be incorporated. Based on legal advice, some are included in the DTC Bill and

others will be included in the DTC Regulation, Customs PE Regulations and/or the DSGL.

Defence undertook further confidential consultation with select individuals from key industry and higher education and research sector bodies. This included asking individuals to sign Non Disclosure Agreements and subsequently sending them an advance copy of the DTC Bill and Impact Analysis and briefing them on the changes.

Public consultation

On Tuesday 7 November 2023, the Australian Government commenced public consultation on the Exposure Drafts of the DTC Bill and Explanatory Memorandum (Image 9) for the period 7–17 November 2023. Both of these Exposure Drafts were released publicly on Defence’s website (Image 10).

The reason for the compressed consultation timeframe was due to a need to the small window to seize the opportunity for a national exemption to US export control licencing requirements – this is a historic and transformational opportunity for our economy and national security.

Defence released the DTC Bill and Explanatory Memorandum via its public website to provide stakeholders

the opportunity to provide written feedback on the proposed amendments prior to the Bill’s introduction to the Parliament. The website advised the public that the Australian Government was also considering additional exceptions for inclusion via the DTC Regulation and the DSGL.

Defence also provided the DTC Bill and Explanatory Memorandum via email to all stakeholders engaged through until public release of the documents. Defence conducted over 20 briefings both online and in-person with key government, industry, higher education and research sector peak bodies on the legislative amendments.

Image 9: DTC Bill and Explanatory Memorandum

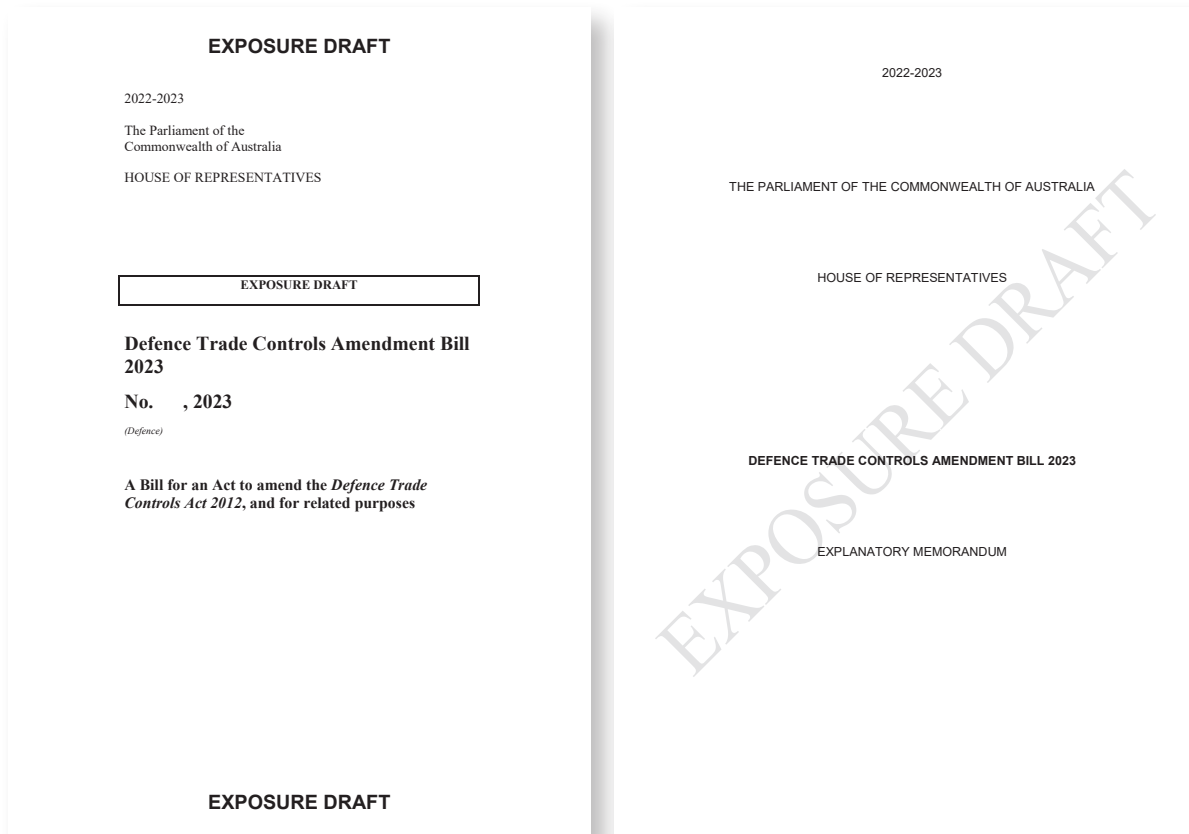
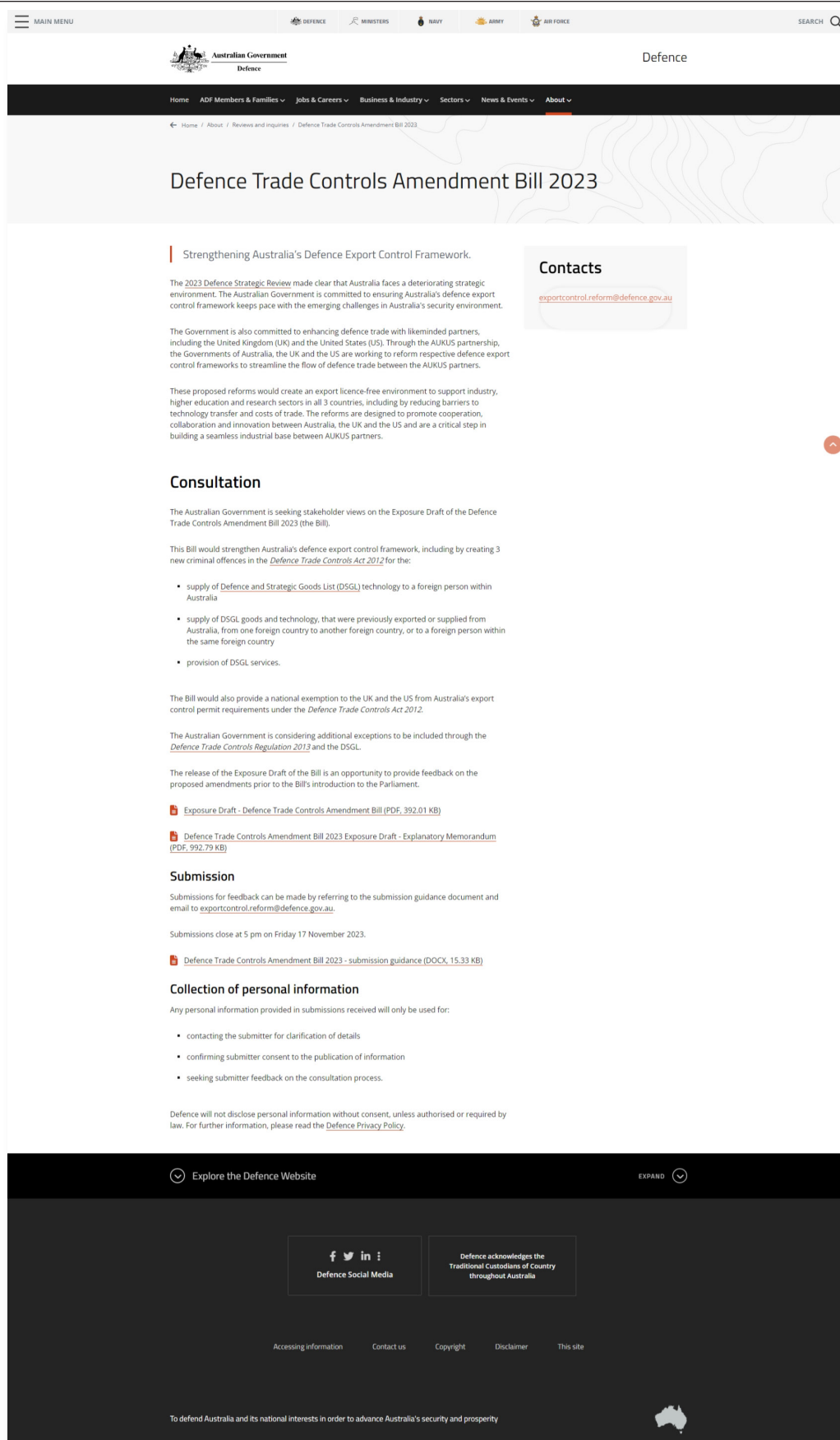


Image 10: DTC Bill consultation website



Defence received 58 written submissions during public consultation. All submissions were reviewed and broken down into the themes and an assessment made as to the best mechanism through which to adopt the proposals. Defence sought to address as much feedback as possible in the DTC Bill, however the majority of the feedback related to implementation, outreach and education. Table 20 provides a summary of the feedback received against each theme and outlines how it was or will be addressed by Defence.

Table 20: Feedback on DTC Bill and Explanatory Memorandum

Proposal	How it was / will be addressed
Amendments to the DTC Bill	
Amend the DTC Bill to limit DSGL services to Part 1 of DSGL and provide an exception for Five Eyes Partners.	DTC Bill amended to narrow the scope to Part 1 of the DSGL. An exception for Five Eyes Partners will be included in the DTC Regulation.
Expand definition of Australian person to include New Zealand (NZ).	NZ is included on the FCL and therefore all NZ employees are excluded from the 10, 10A, 10B and 10C Offences. The exception to be extended for non-employees through the DTC Regulation. Defence will consult the working group (discussed in Question 6) on the mechanism prior to inclusion in the DTC Regulation.
Including a sunset mechanism for future application of Australian law to exported and re-exported articles. The period of time over which such a sunset clause applies should be based upon the technology in question and must be evaluated at the time of export approval.	Defence will consult the working group (discussed in Question 6) on the inclusion of this in DTC Regulation.
Establish a grandfathering mechanism to permit ongoing work to continue through either: - completion of the project, or - for ongoing collaborative partnerships of extended or indefinite duration, a deadline agreed upon through negotiations between affected parties and export control representatives.	Defence will consult the working group (discussed in Question 6) on the inclusion of this in DTC Regulation.
Exceptions	
Add exception for Offence 10A for visiting foreign nationals with citizenship or permanent residency of a country listed on the FCL.	Defence will consult the working group (discussed in Question 6) on the mechanism prior to inclusion in the DTC Regulation.
Add exception for Offence 10A and 10C for build-to-print manufacturers that manufacture a component part of a DSGL good or technology.	Defence will consult the working group (discussed in Question 6) on scope prior to inclusion in the DTC Regulation.
Extend the exception for individuals with a covered security clearance to all Five Eyes Partners.	DTC Bill amended.
Finalise an exception for Fundamental Research.	Defence will finalise in consultation with the working group (discussed in Question 6) on the definition prior to inclusion in the DSGL.
Work with stakeholders to identify additional exceptions that will be specified in regulations, particularly related to Part 2 of the DSGL (dual-use).	Defence will work with the working group (discussed in Question 6) to identify any further appropriate exceptions.
Foreign Country List	
Review the FCL to determine whether it is appropriate to add any additional countries to the list in light of Australia's current strategic and defence partnerships.	The Australian Government will review the FCL as appropriate.
DSGL	
Defence should undertake a review of the DSGL to ensure it is fit for purpose.	A review of the DSGL is out of scope for these reforms. Amendments to the DSGL are in-scope for the broader DTC Act review.



Proposal	How it was / will be addressed
Explanatory Memorandum	
Include the strategic objectives for the proposed amendments.	Explanatory Memorandum amended.
Clarify the definition of Australian citizen and permanent resident.	Explanatory Memorandum amended.
Clearly state that the provisions under Section 10B are not intended to make the original Australia based exporters of DSGL items liable.	Explanatory Memorandum amended.
Clarify the conditions Defence expects to put on place on export permits to deliver on the intent of this part of the Bill, to provide confidence to potential overseas customers that this will not be an ITAR-like reach-through of Australian export control laws.	Explanatory Memorandum amended.
Implementation	
Ensure phased implementation to allow time for Australian businesses and academic departments to gain familiarity with the new export control environment.	Already in DTC Bill.
Transition	
Re-establish the Strengthened Export Controls Steering Group (Section 74A of the Act) to: <ul style="list-style-type: none"> - Co-design online export control learning module and education materials; - Improve awareness, understanding, implementation, and compliance with the legislation to mitigate potential unintended consequences on trade, research and development; and - Support practical implementation of the new offence provisions. 	Defence to establish a working group (discussed in Question 6) by December 2023.
Consult sector on the type and duration of the permits for 10A and 10C.	This will be undertaken through the working group (discussed in Question 6).
Increase resourcing for DEC to ensure the new regulations are administered efficiently and effectively including communicating assessment and compliance requirements associated with the deemed supply, re-supply, and DSGL-service provision controls and an increase in outreach.	Defence is actively increasing resourcing.
Upgrade and automate elements of the DEC ICT System.	Defence has commenced work to upgrade the existing DEC ICT System and will engage and seek feedback from with the working group (discussed in Question 6) prior to going live.
Review	
Undertake a review of the operation and functioning of these new regulations 18-24 months after the offences take effect (that is, after the 12-month transition period), via a working group with members drawn from research, industry, policy and government. The key items of assessment should include practical functioning (e.g. processing times/delays), comparison against the structure and functioning of comparable regimes in the US and UK to identify potential disadvantage for Australian exporters, and feedback from customers on the attractiveness of Australian technology exports under the new regime.	The Australian Government has committed to undertaking this review if the DTC Bill passes. The working group (discussed in Question 6) will support and provide input into this review.

At the conclusion of public consultation, Defence updated the consultation website to advise stakeholders that the Australian Government will continue to consult on additional exceptions to be included in the DTC Regulation and DSGL from December 2023 and into early 2024.

QUESTION 6

What is the best option from those you have considered and how will it be implemented?

Option 2A is the recommended option. The cost assessment (**Question 4**) alongside stakeholder consultation (**Question 5**) in particular indicates that **Option 2A** has the greatest net benefit, with an overall reduction in annual regulatory burden of AUD\$614 million.

Option 2A also provides the greatest alignment with the policy objectives outlined in **Question 2**.

Option 2A is also generally supported by affected stakeholder groups due to the inclusion of exceptions.

Feedback and analysis confirmed that **Option 1** is insufficient to address the problems and objectives outlined in **Questions 1** and **2**. If Australia's export control framework is not amended to be comparable to that of the US, Australia will not be able to access the national exemption from US export controls. There was also low support for **Option 2B** across all stakeholders due to exclusion of exceptions that resulted in a greater regulatory burden on affected stakeholders.

Stakeholder feedback played an important role in refining **Option 2A** and identifying areas of the policy proposals where further clarification was necessary.

Question 5 explores how feedback was incorporated into the preferred option.

Decision rule

In arriving at the best option, the following assessment process was adopted:

Step 1) Assessment of the options against the objectives

Each of **Options 1, 2A** and **2B** were assessed in a structured way against the strategic objectives and a qualitative assessment of the overall alignment was made;

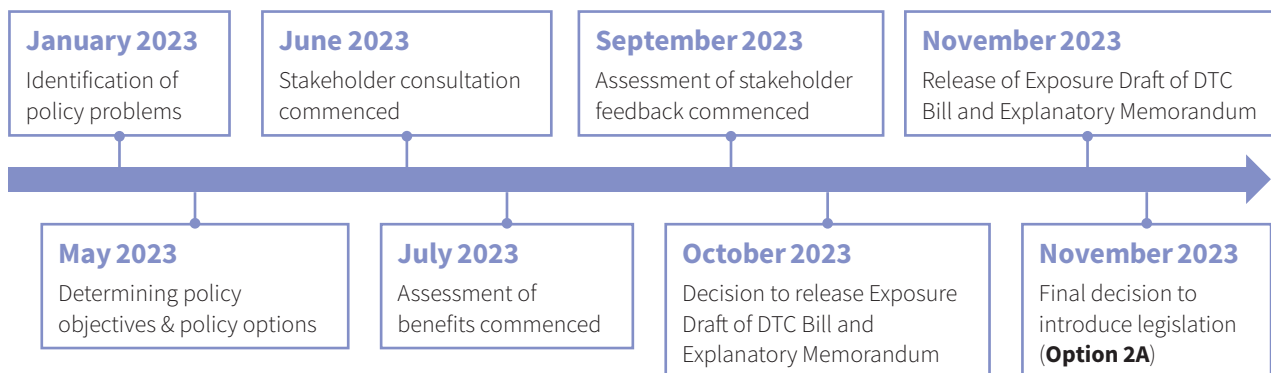
Step 2) Assessment of the benefits

Each option was assessed based on the potential quantified costs and quantified benefits. Per the Australian Government Guide to Policy Impact Analysis, priority was given to the option that provided the most quantifiable benefits; and

Step 3) Assessment of stakeholder feedback

Consideration of the outcomes of stakeholder consultation in respect of the different options was conducted.

Diagram 1 – Decision timeline



Assessment of best option

Step 1) Assessment against the success metrics

Table 21 assesses the alignment of each option against the objectives and demonstrates that **Option 2A** is most strongly aligned to the policy objectives.

Table 21: Assessment of success metrics

Strategic objectives	Option alignment to strategic objective			Overall alignment statement
	1	2A	2B	
Fast-track the delivery of leading-edge defence capabilities into the hands of our forces more efficiently, maintaining Australia's capability edge.	x	✓	✓	Australia will have faster access to leading-edge defence capabilities by creating a licence free environment under Option 2A and Option 2B . Option 1 does not achieve this.
Certification by the US Secretary of State that Australia's export control framework is at least comparable to the US. This will allow Australia to access the country-based exemption proposed by the US Congress for AUKUS partners.	x	✓	✓	The proposed legislative change under both Option 2A and Option 2B will allow the US to certify Australia's export control framework as comparable, thereby allowing Australia to access the country-based exemption proposed by the US Congress. Without legislative change (Option 1), it is unlikely to occur.
Prevent the unwanted proliferation of controlled goods and technology and reduce the risk of controlled goods and technology being acquired by entities not aligned with Australian interests. This will better protect Australia's national security.	x	✓	✓	Option 1 maintains the existing and previously identified gaps in Australia's export control framework. Option 2A and Option 2B , deliver legislative change to close these gaps.
Limit the regulatory burden on Australian industry, higher education and research sectors to encourage innovation and cooperation at an unprecedented pace. This will provide Australia, and our partners, with a genuine capability development and innovation edge.	x	✓	x	Option 2A and Option 2B both provide for a licence-free environment. Option 2B increases the regulatory burden by introducing new controls on deemed supply, re-supply, and DSGL services without exceptions. Option 2A introduces these new controls alongside a number of defined exceptions to reduce this impact.

Step 2) Estimate of benefits

Table 22 summarises the quantified costs and benefits over a 10-year period. From Table 22, it is evident that **Option 2A** presents the highest benefit of the options considered (**Question 3**), with a quantified net present value of AUD\$614 million over 10 years. This analysis does not take into account the impact of unquantified benefits such as increased access to innovation and collaboration, increased export competitiveness and resolving gaps to Australia's export control framework (**Policy Problem 2**).

Table 22: Summary of quantified costs and benefits over 10-year period

Option	Quantified Costs \$'m (10-year period)	Quantified Net Benefits \$'m (10-year period compared to option 1)
Option 1	\$706.3	N/A
Option 2A	\$92.5	\$613.8
Option 2B	\$101.8	\$604.5

Categories of costs

There are quantified and un-quantified categories of costs identified for policy **Option 2A**:

- Increase in the regulatory compliance burden for deemed supply, re-supply, and DSGL services.
- Reduction in the regulatory compliance burden in a permit-free environment for the export and supply of DSGL goods and technology to the UK and US.
- **Option 2A** will see an increase in DEC costs due to an initial education campaign for industry, higher education and research sectors around these legislative changes. In the short term, it is likely these sectors will 'over-subscribe' to licences while they navigate the exceptions available and determine their applicability. Ongoing costs are expected to decrease over time and will be assessed in the evaluation of the policy (see **Question 7**).

Step 3) Feedback provided in stakeholder consultation

Overwhelmingly, stakeholder consultation agreed that it was in Australia's national interest to amend the DTC Act to access the national exemption from US export controls. Stakeholders were in broad agreement that **Option 2A** should be the option that is implemented (see **Question 5**).

Stakeholder consultations identified the compliance burden that a permit approach to deemed supply, re-supply, and DSGL services would have on their business, educational activities or research ability in **Option 2A**. However, it was also noted that this would be reduced to a manageable level through the introduction of exceptions (see **Question 3**). It was further noted that the increase in compliance burden for deemed supply, re-supply, and DSGL services would also be offset by a reduction in compliance burden for exports and supplies to the UK and US.

Stakeholder consultations identified that it was critical for the government to work with stakeholders to define the exceptions in the DTC Regulation and DSGL. Stakeholders unanimously requested a strong outreach and education program from the government to support with effective, efficient and compliant implementation. Further stakeholders felt strongly that the government needed to resource DEC to issue permits in an expedited fashion. Stakeholders emphasised that without this support to implement **Option 2A**, the government would be unlikely to meet its policy objectives (see **Question 2**) and the consequences for Australian industry, higher education and research sectors would be dire.

Stakeholder feedback also showed that stakeholders will not be supportive of these legislative amendments in Australia, if the US Congress does not pass legislation to provide Australia with a national exemption from US export controls.

Summary of assessment

Option 2A (legislative changes with complimentary exceptions) has been identified as the preferred option due to the assessment that the benefits of implementation outweigh the costs and impacts of the legislative change. **Option 2A** addresses the identified problem statements and contributes to all policy objectives while minimising the regulatory burden on Australian entities. Limited entities in Australian industry, higher education and research sectors will be affected negatively by the legislative changes and **Option 2A**. **Option 2A** supports streamlining the export control regime to enable collaboration at the speed and scale required to meet strategic challenges and will support achieving comparability with the US export control frameworks. Furthermore, **Option 2A** will support Australia to build long-term national defence resilience, strengthen Australia's protective security environment and support national security interests.



Implementation approach

To ensure effective implementation of **Option 2A**, ongoing investment and coordination by the Australian Government is required. Effective and close engagement with key stakeholders, including industry, higher education and research sectors, relevant Australian government agencies, and the AUKUS partners will maximise the success of this policy recommendation. Engagement will commence prior to legislative changes taking effect, including via proactive and ongoing training and support for new and existing regulated entities.

An implementation timeline has been developed to capture stakeholder engagement in Table 23.

Table 23: Implementation and engagement timeline of Option 2A

Option 2A: implementation and engagement timeline		
	Phase in period 6 months prior to legislation implementation	Grace/Transition period 12 months following legislation implementation
Ongoing stakeholder engagement	Coordinated stakeholder engagement with key government agencies and stakeholders, supporting the passage of legislation through Parliament.	Coordinated stakeholder engagement with affected parties to: <ol style="list-style-type: none"> Provide advice on exceptions; Advise on the new permit regime for deemed supplies and DSGL services; and Respond to questions around the impact of changes.
Development of a governance plan	DEC will develop and implement a governance plan to navigate new export controls (including surge capacity of staff, compliance tracking).	
Sector outreach and education	Education program will be designed to provide guidance on the update to legislation for affected industry, higher education, and research entities on new permit requirements and exceptions.	

Legislation implemented

Defence will lead stakeholder engagement and implementation during the 12-month grace period prior to offence provisions coming into effect. This includes by establishing two working groups – one for industry and investment stakeholders and another for higher education and research stakeholders – commencing in December 2023. Each working group would consist of 15 representatives drawn from across the sector. The initial focus of the working groups will be to support the drafting of the exceptions in the DTC Regulation and DSGL and to support development of the new permits for deemed supply and DSGL services.

Transition

- During the 12-month grace period:
- Defence (together with OPC) will draft and release the DTC Regulation, upgrade the DEC ICT System, release an online export control learning module and education materials, and recruit additional staff to support the new advice, assessment and compliance requirements associated with the deemed supply, re-supply, and DSGL-service provision controls and an increase in outreach.
 - Regulated entities will be afforded time to assess the impact of the new control on their specific circumstances, self-assess exceptions that apply, adjust business processes and seek permits from Defence for controlled activities.
 - Industry, higher education and research sectors will have the opportunity to better understand and capitalise on the opportunities presented through the implementation of the trilateral licence-free environment.

Consultation on regulation drafting

In parallel to passage of the DTC Bill, changes are required to be made to the DTC Regulation and the Customs PE Regulations. Changes to the DTC Regulation will give effect to the exceptions to the offence provisions in the DTC Bill. Changes to the Customs PE Regulations will give effect to the permit-free environment for exports from Australia to the US and/or UK. Amendments to the DTC Regulation and the Customs PE Regulations will be publicly consulted prior to finalisation.

Defence will consult with the two working groups in drafting the DTC Regulation amendments for public consultation.

In particular, Defence will consult the working groups on drafting of the following exceptions:

- Exception for Fundamental Research.
- Exception for visiting foreign nationals with citizenship or permanent residency of a country listed on the FCL.
- Exception for 'build-to-print' manufacturers that manufacture a component part of a DSGL good or technology.

Defence will consult the working groups on possible additional exceptions requested by stakeholders in relation to Part 2 of the DSGL and a sunset mechanism for Offence 10B.

The application process

DEC already has a robust process that is followed to receive, triage, assess and grant/refuse export permit requests. This process will require minor adjustment to accommodate the new controls proposed in **Option 2A**. Image 11 demonstrates the current state explication workflow alongside the future state workflow.

Defence will consult with the working groups on appropriate permit types and duration for deemed supply and DSGL services to ensure the permits cover the variety of activities appropriately and with minimised regulatory burden on Australian industry, higher education and research entities.

Outreach and education

Defence already has well-established export control outreach programs that assist with communicating regulatory requirements and changes. Defence proactively engages with exporters with the view to demystify Australia's export controls system, build understanding and foster compliance. Information about export controls is readily available on Defence's website, providing help and guidance through the public online feedback form⁴⁵ and public 1800 phone number that is staffed from 9am-5pm Monday to Friday, and conducting outreach activities and forums (Images 12-16).

This outreach program will be expanded to educate and upskill regulated entities on the new controls and exceptions in place before offence provisions come into effect. This includes the development of co-designed online learning modules that stakeholders can use to support decision making in relation to permit requirements and education and guidance material. In future iterations of the education and guidance material, this could include anonymised permit decisions to assist stakeholders in self-assessing the need to apply for a permit.

Defence also organises a variety of outreach events each year, including workshops and roadshows in major Australian cities. These events include presentations on current export control issues and provide opportunities for face-to-face discussion with experienced Defence staff. Defence also participates in defence industry exhibitions to raise awareness of Australia's export controls. Defence will increase its outreach events each year, including workshops and roadshows in major Australian cities.

The expanded outreach and education program will ensure stakeholders are well informed of the changes and feel supported to comply with the new export controls. The online feedback form and the 1800 phone number will also support ongoing evaluation and resolution of future policy issues.

⁴⁵ The Defence Export Controls website can be found at: <https://www.defence.gov.au/business-industry/export/controls/contact-us>



Image 11: Implementation of the permit application process

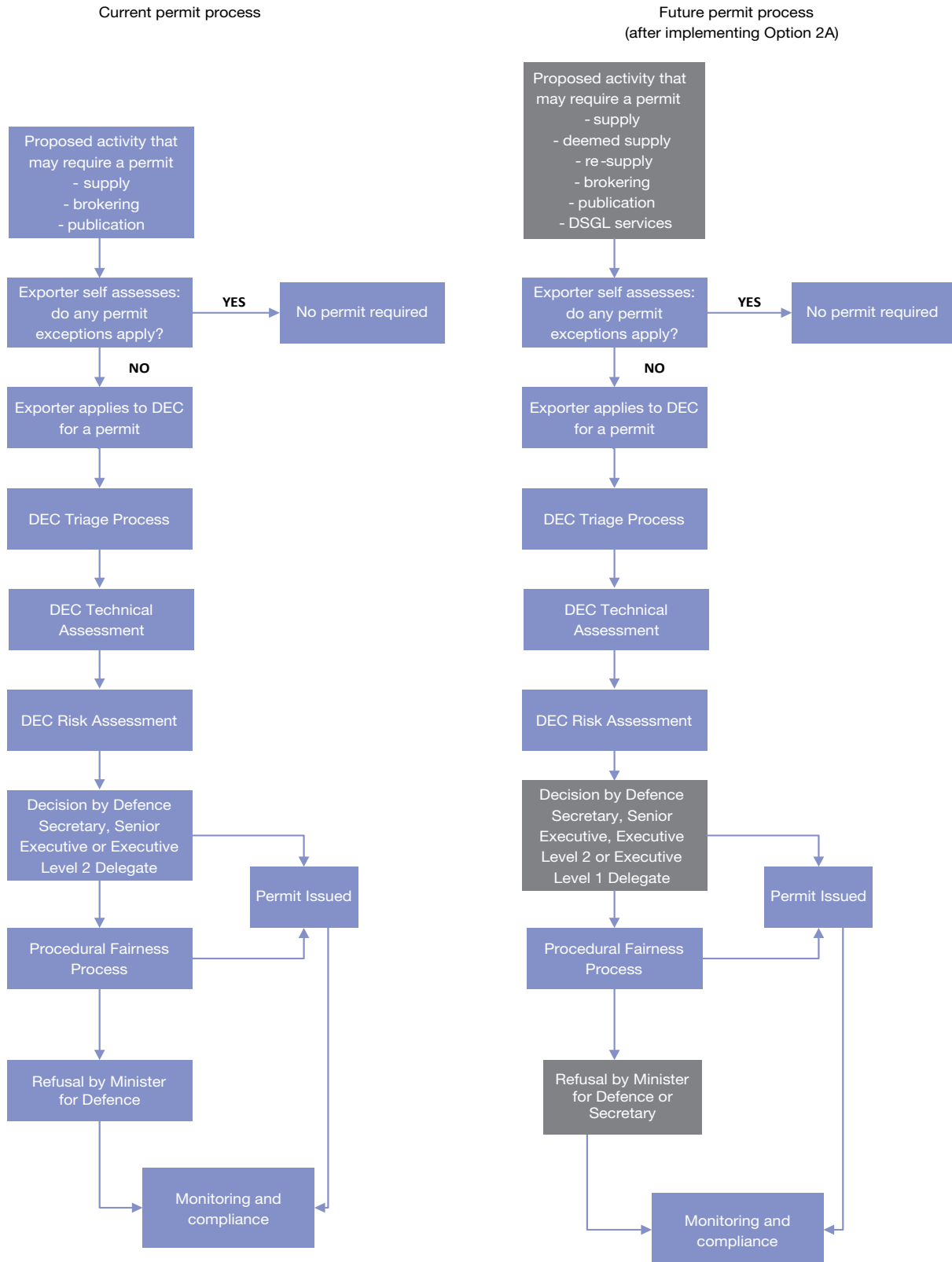


Image 12: DEC's website includes information on their outreach program

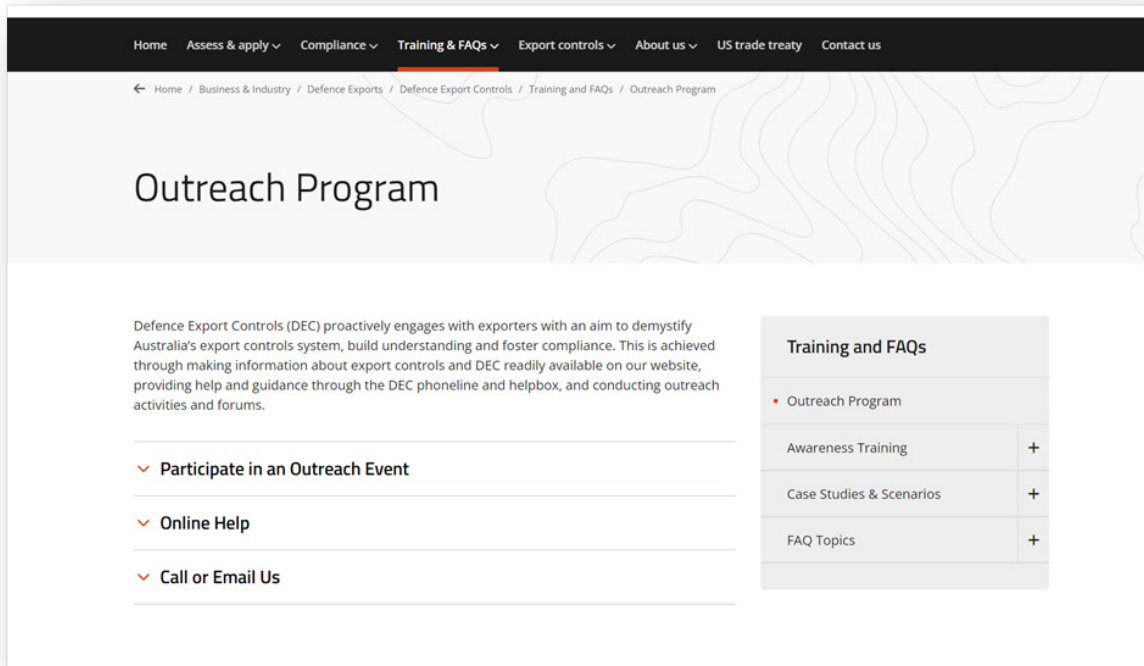


Image 13: DEC's website includes case studies and scenarios to support exporters

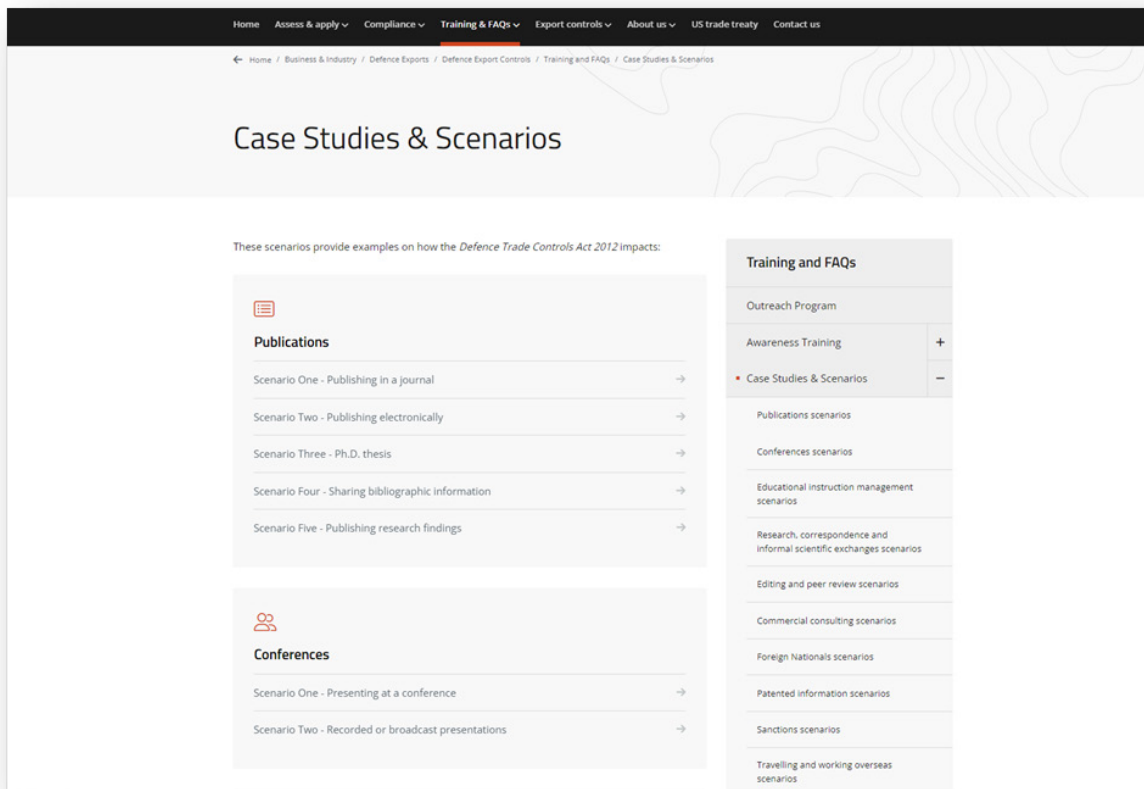


Image 14: DEC's website includes FAQs to support exporters

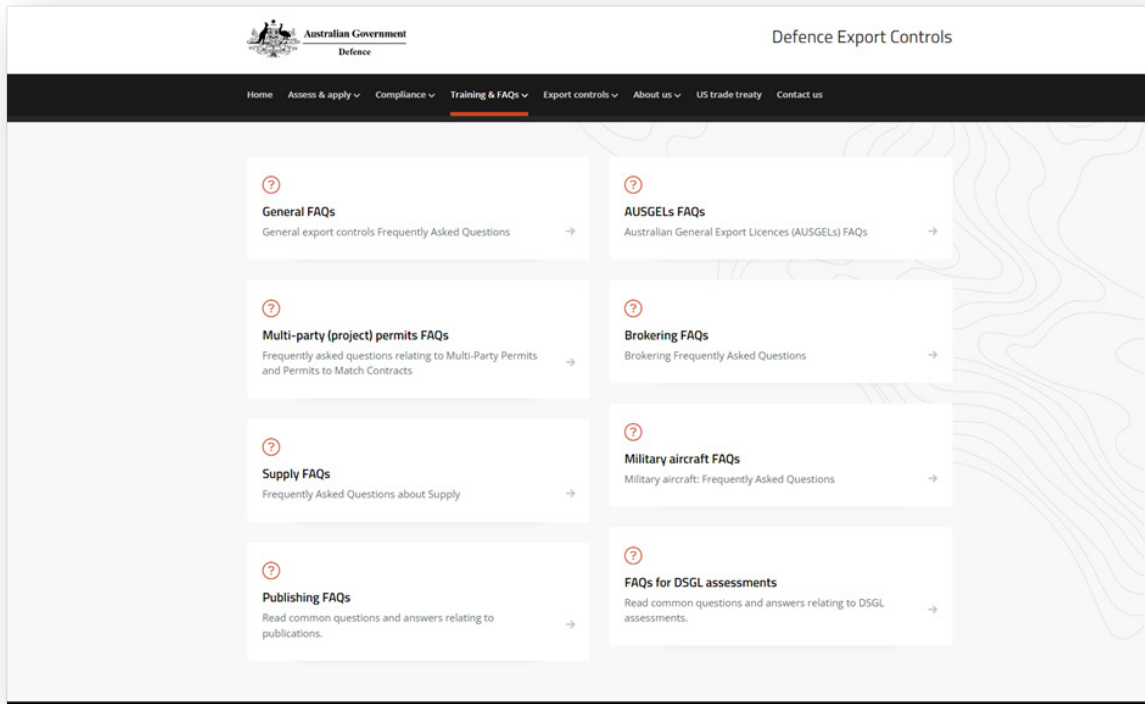
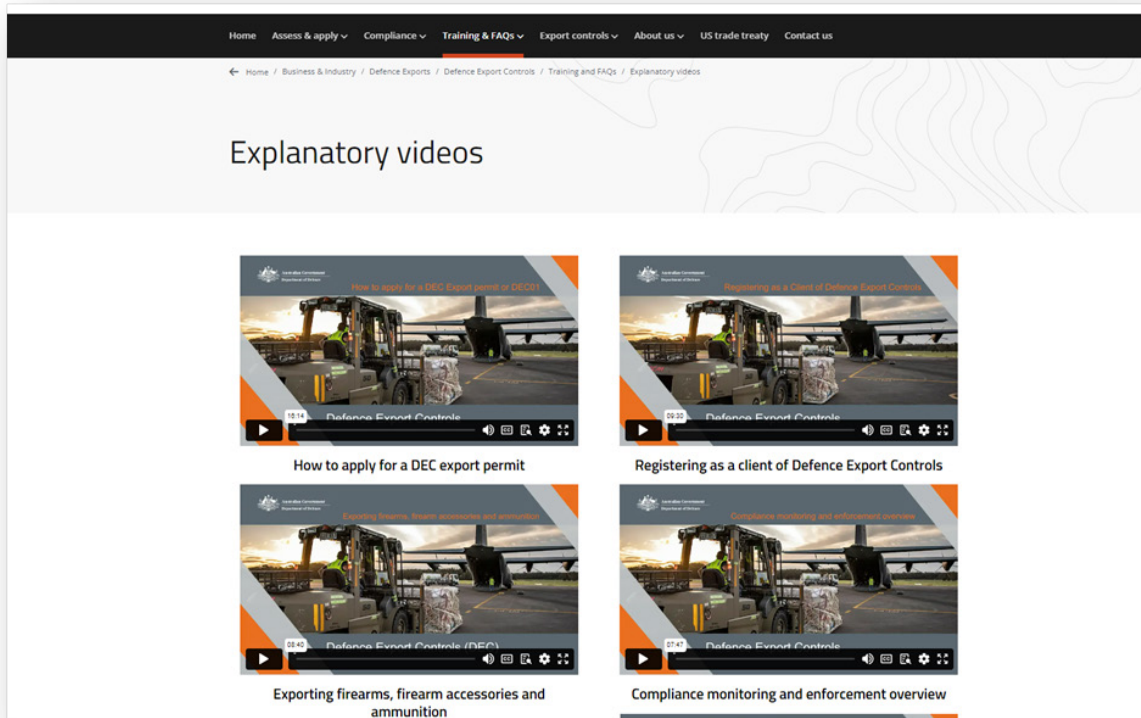


Image 15: DEC's website includes online awareness training to support exporters



Image 16: DEC's website includes explanatory videos to support exporters



Coordination with AUKUS partners

Successful implementation will require continued engagement with the UK and the US to communicate export control legislative changes. This engagement will continue to ensure that the objectives of the AUKUS partnership are achieved to facilitate the transfer, collaboration and development of key technologies in an export licence-free environment. This engagement will be undertaken through existing bilateral and trilateral fora including the Defence Trade Working Group.

Compliance monitoring

Implementation will be supported by enforcement and monitoring activities that ensure compliance with new regulatory provisions.

Defence already conducts, and will continue to conduct, a variety of outreach and compliance activities intended to:

- Raise awareness of Australia's export controls;
- Verify activities are conducted in line with approvals; and
- Identify and address cases of non-compliance.

Post-transition consultation

Defence will continue to consult with the working groups on the implementation of these changes post the 12-month transition phase. The aim of this consultation will be to understand how the changes have impacted stakeholders and whether the changes have achieved the policy objectives outlined in **Question 2**. Further, the working groups will be used to test evolved outreach and education materials following implementation of the new export controls and the operation of the trilateral licence-free environment. Continuation of the working groups beyond this phase will be considered as part of an evaluation review.



Managing risks with implementation

Implementation of **Option 2A** also brings certain risks that will need to be effectively managed by Defence. An implementation risk assessment has been undertaken. Table 24 identifies the potential impacts of these risks and how they will be effectively managed.

Table 24: Risk assessment of implementation of Option 2A

Potential risk	Description	Likelihood rating	Risk rating	Mitigation strategies
Self-assessment required by entities	Entities self-assessing whether exceptions apply may result in inaccurate assessments, biases, and non-compliance, which can lead to misleading reporting, compromised objectivity, and security risks.	Possible	Medium	<p>Clear guidance on DEC website: DEC to build off existing guidance provided to entities with clear guidance on scope of exceptions. Clearly define the criteria, expectations, and methodologies to be used on the DEC website. This will help entities understand what is expected of them and reduce the risk of misinterpretation.</p> <p>Sector outreach and education: Offer comprehensive education programs to entities. Provide workshops, seminars, or online courses that cover the necessary skills, knowledge, and best practices. This will enhance their understanding and competence in the process.</p> <p>Expected change in risk rating to: Low</p>
Misalignment with international obligations	Misalignment can have serious implications. It can strain diplomatic relationships, resulting in restricted access to global markets and opportunities. Non-compliance with international obligations may also signify a lack of commitment to ethical standards, undermining trust and credibility among stakeholders.	Unlikely	Low	<p>Review of international obligations: This Impact Analysis has considered international obligations (refer Appendix 2) and Option 2A takes into account Australia's international obligations and commitments to manage proliferation risks. Addressing the gaps in Australia's existing export control framework will prevent the proliferation of controlled goods and technology.</p> <p>Monitoring and evaluation: Ongoing monitoring and evaluation outlined in Question 7 will assist with ensuring Australia's export control framework continues to support international obligations and commitments.</p> <p>Expected change in risk rating to: Low</p>
Stakeholders not understanding the permit requirements or exceptions	The risk of stakeholders not understanding the permit requirements or exceptions means that there is a possibility of non-compliance, as stakeholders may unintentionally violate regulations due to their lack of understanding. Misunderstandings regarding permit requirements or exceptions can lead to miscommunication, conflicts, and strained relationships between stakeholders and DEC.	Almost certain	Medium	<p>User-friendly documentation: create easy to understand and visually appealing documentation such as user manuals, process flowcharts and FAQs as part of the education process in implementation. Ensure documents are publicly available on the DEC website.</p> <p>Engagement and consultation: Engage stakeholders across the implementation process. Allow them to provide input, seek their feedback, and address any concerns or misunderstandings promptly.</p> <p>Expected change in risk rating to: Low</p>

Potential risk	Description	Likelihood rating	Risk rating	Mitigation strategies
Inadequate resources	Inadequate resources may hinder the Australian Government's ability to effectively engage with stakeholders, resulting in missed opportunities for collaboration and input. It may also lead to insufficient support and assistance provided to stakeholders, inhibiting their understanding of processes and requirements.	Possible	Medium	<p>Resource Allocation: Australian Government to conduct resource planning and allocate sufficient resources in budgeting and planning to support activities.</p> <p>Expected change in risk rating to: Low</p>
Misalignment with AUKUS partners	The risk of misalignment with other AUKUS partners can have detrimental effects on the collaborative relationship. This misalignment can undermine trust and cooperation, hindering effective collaboration and potentially leading to missed opportunities or suboptimal outcomes.	Unlikely	Low	<p>Legislative change design – Option 2A has been designed to achieve comparability with the US export control framework, by aligning definitions and regulating deemed supply, re-supply, and the provision of DSGL services.</p> <p>Engagement with AUKUS partners – Defence will have ongoing engagement with the AUKUS partners as part of the evaluation process (refer Question 7).</p> <p>Expected risk rating: Low</p>
US not proceeding with licence-free environment	The US Congress does not pass legislation that provides Australia with a national exemption from the <i>US Arms Export Control Act</i> .	Possible	Medium	<p>Legislative change design – Option 2A has been designed to achieve comparability with the US export control framework, by aligning definitions and regulating deemed supply, re-supply, and the provision of DSGL services.</p> <p>Engagement with US Administration and Congress – The Australian Government is advocating the US Administration and Congress for the passage of legislation by the end of 2023.</p> <p>Expected change in risk rating to: Low</p>
UK not proceeding with licence-free environment	The UK does not provide Australia with a national exemption from UK export control licencing requirements.	Possible	Medium	<p>Engagement with UK Government – The Australian Government is advocating the UK Government for a reciprocal national exemption from UK export control licencing requirements.</p> <p>Expected change in risk rating to: Low</p>





QUESTION 7

How will you evaluate your chosen option against success metrics?

The evaluation process

Evaluation is the systematic and objective assessment of the design, implementation or results of a government program or activity for the purposes of continuous improvement, accountability and decision-making.

Option 2A will be evaluated in line with the Commonwealth Evaluation Policy.⁴⁶ This policy provides for a principles-based evaluation approach that is fit for purpose, useful, robust, ethical, culturally appropriate, credible, and transparent where appropriate.

As part of the evaluation process, Defence will review the impact of the new legislation three years after the passage of legislation to implement **Option 2A**. This will allow for evaluation of the new reforms and their effectiveness in meeting the policy objectives, including any unintended outcomes.

The evaluation phase will consist of several activities including:

- An assessment of the effectiveness of the outreach, education and communication campaign;
- An evaluation of the impact on industry, higher education and research sectors;
- A comparison of the export control frameworks between Australia, the UK and US;
- An assessment of permit processing times for the new export controls;
- A post-implementation review of DEC compliance monitoring;
- Engagement with the AUKUS partners; and

- Ongoing engagement with stakeholders on future measurement issues.

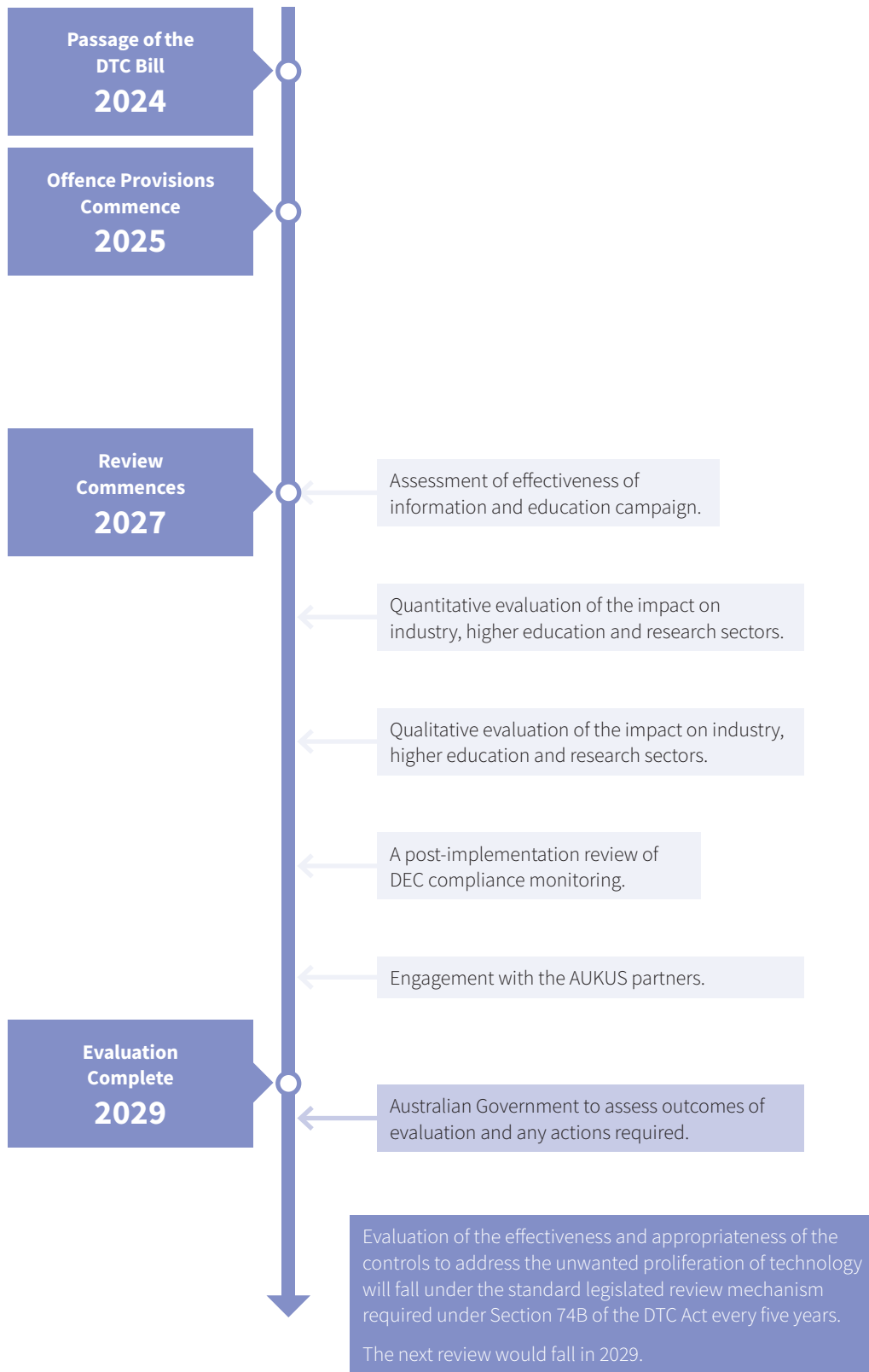
Each of the activities to be undertaken as part of evaluation is discussed in further detail below and are mapped against the policy problem and objectives in Table 25.

This review will commence approximately two years after commencement of the new offence provisions and will focus on addressing issues that have surfaced during the transition phase.

Following this three-year review, evaluation of the effectiveness and appropriateness of the controls to address the unwanted proliferation of technology will fall under the standard legislated review mechanism required under Section 74B of the DTC Act every five years. Image 17 visually outlines the timeline for evaluation.

⁴⁶ Department of Finance. 10 January 2023. 'Commonwealth Evaluation Policy and Toolkit.' Accessed 21 October 2023, <https://www.finance.gov.au/about-us/news/2021/commonwealth-evaluation-policy-and-toolkit>

Image 17: Evaluation timeline



Evaluation activities

Effectiveness of the information and education campaign

The evaluation process will start with an assessment of the effectiveness of the information and education campaign.

This will examine the:

- Adequacy of information provided;
- Accessibility of information and support;
- Reach of the campaign and any over or under-served stakeholders;
- Support available for self-assessing legislative exceptions; and
- The number of applications that did not need to be applied for.

The assessment of the education campaign will be conducted prior to the evaluation of industry, higher education and research sector impacts (described next), to inform effective communication with these stakeholders.

Quantitative evaluation of the legislative amendments' impact on the industry, higher education and research sectors

Defence will analyse available data to support the three-year review including:

- The impact of the reduction in export licences required by industry, higher education and research sectors for exports or supplies of DSGL controlled goods, software and technology to the UK and the US;
- The percentage increase in value and volume of import trade through AUKUS partners;
- The percentage increase in value and volume of export trade through AUKUS partners;
- Any changes in the value and volume of export trade with non-AUKUS partners;
- The total increase in permit applications for stakeholders impacted by the new provisions around deemed supply, re-supply and DSGL services;
- The permit processing times for the new export controls; and
- The effectiveness of the exceptions.

Qualitative evaluation of the legislative amendments' impact on industry, higher education and research sector

Defence will seek qualitative feedback from these stakeholders through the peak bodies of industry, higher education and research sectors and the two working groups. Defence will seek evidence on the effectiveness of the exceptions and the reduction in costs borne by stakeholders in managing export licences. Defence will

seek evidence to understand the impact of the policy in improving and generating a more competitive Australian sovereign industrial landscape.

Post implementation review of DEC's compliance activities

DEC is responsible for monitoring and promoting compliance with Australia's export control framework. Defence will review the effectiveness of DEC's monitoring and compliance program as it relates to the new controls and exceptions proposed under **Option 2A**. Defence will analyse quantitative data relating to export control breaches over time, including ABF referrals and voluntary reporting. This analysis will inform adjustments to the DEC outreach program and compliance resourcing, to better support stakeholders' informed and forthright compliance with Australia's export controls.

Engagement with AUKUS partners

Defence will also need to evaluate the legislative changes through the lens of the AUKUS partnership to ensure that the barriers that currently limit the efficacy of collaboration between Australia's defence industry and its counterparts in the UK and the US have been effectively removed.

This review will also be beneficial to understand the total value and volume increase of Australian imports into the UK and US through AUKUS and what benefits are being derived by respective domestic industries.

It will be critical that the evaluation also articulate whether there has been any consequential change in the trade relationship between Australia and non-AUKUS partners.

Ongoing engagement with stakeholders on measurement issues

DEC is committed to working closely with exporters. DEC conducts regular outreach activities nation-wide across the industry, higher education and research sectors. As part of these activities, stakeholders affected by the legislative amendments will be able to engage directly with DEC staff.



Table 25: Mapping policy Option 2A against policy objectives and success metrics

Problem statement	Objectives	Three year evaluation	Five year evaluation	Success
Australia cannot access a country-based exemption to the licencing requirements of the US <i>Arms Export Control Act</i> for AUKUS partners.	<p>Fast-track the delivery of leading-edge defence capabilities into the hands of our forces more efficiently. This will maintain Australia's capability edge.</p> <p>Certification by the US Secretary of State that Australia's export control framework is at least comparable to the US. This will allow Australia to access the country-based exemption proposed by the US Congress for AUKUS partners.</p> <p>Limit the regulatory burden on Australian industry, higher education and research sectors to encourage innovation and cooperation at an unprecedented pace providing Australia, and our partners, with a genuine capability development and innovation edge.</p>	<p>An assessment of the effectiveness of the information and education campaign.</p> <p>A quantitative evaluation of the impact on industry, higher education and research sectors.</p> <p>A qualitative evaluation of the impact on industry, higher education and research sectors.</p> <p>A post-implementation review on DEC's compliance activities.</p> <p>Engagement with the AUKUS partners.</p> <p>Ongoing engagement with stakeholders on future measurement issues.</p>	<p>Under Section 74B of the DTC Act, the Minister for Defence must cause a review of the operation of the Act at intervals of no more than five years.</p> <p>The persons undertaking the review must give the Minister a written report of the review.</p> <p>The Minister must present a copy of the report from the review to be tabled in each House of Parliament within 15 sitting days of that House after the report is given to the Minister.</p>	<p>Australian Government, industry, research and academic sectors can access the full national exemption proposed by the US Congress for AUKUS partners.</p> <p>Collaboration and innovation between industry, research and academic sectors in Australia, the UK and the US is accelerated.</p> <p>Export control-related barriers between industry, research and academic sectors in Australia, the UK and the US are removed.</p> <p>There is a reduction in costs borne by Australian industry, research and academic sectors in applying for export control licences.</p>
Gaps in Australia's existing export control legislative provisions enable the transfer of controlled goods and technologies both within and outside of Australia to foreign entities.	Prevent the unwanted proliferation of controlled goods and technology and reduce the risk of controlled goods and technology being acquired by entities not aligned with Australian interests. This will better protect Australia's national security.			A robust export control framework that protects sovereign technical data and prevents the unwanted and unlawful proliferation of controlled technologies that could prejudice Australia's security, defence and international relations.

Appendices 1 - 5



APPENDIX 1: Glossary

ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ADF	Australian Defence Force
AECA	The US' <i>Arms Export Control Act</i>
AFP	Australian Federal Police
ASIO	Australian Security Intelligence Organisation
AUKUS	A trilateral security partnership between Australia, the United Kingdom and the United States of America
BIS	US Department of Commerce's, Bureau of Industry and Security
CCL	Commerce Control List
Controlled goods or technology	Goods or technology specified in the DSGL
Customs PE Regulations	Customs (Prohibited Exports) Regulations 1958
Customs Act	<i>Customs Act 1901</i>
DEC	Defence Exports Controls, Branch within the Department of Defence
Defence	Department of Defence
DFAT	Department of Foreign Affairs and Trade
DSGL	Defence and Strategic Goods List
DTC Act	<i>Defence Trade Controls Act 2012</i>
DTC Bill	Defence Trade Controls Amendment Bill 2023
DTC Regulation	Defence Trade Controls Regulation 2013
Dual-use goods and technology	Goods or technology developed for primarily commercial applications but that also have an application in a military context
EAR	The US' Export Administration Regulations
FCL	Foreign Country List in the <i>Defence Trade Controls Act 2012</i>
ICS	Integrated Cargo System
ICT	Information and Communications Technology
ITAR	The US' International Traffic in Arms Regulations
NIC	National Intelligence Community
NPT	Non-Proliferation Treaty (relates to nuclear weapons)
OIA	Office of Impact Analysis
SME	Small and Medium Enterprise
TRL	Technology Readiness Level
UK	United Kingdom
US	United States of America
USML	US Munitions List
WMD	Weapons of Mass Destruction
WMD Act	<i>Weapons of Mass Destruction (Prevention of Proliferation) Act 1995</i>

APPENDIX 2: Australia's export control framework

Every person in Australia, whether an Australian national or not, is subject to Australia's export control laws. Some export controls also apply to Australian citizens and residents overseas.

Defence Export Controls (DEC), within Defence, is responsible for administering export controls legislation on behalf of the Minister for Defence.

Australia's export control system, a key element of Australia's protective security framework, aims to stop military goods and technology—and goods and technology that can be used in chemical, biological and nuclear weapons—from being transferred to individuals, states or groups with interests prejudicial to Australia's security, defence or international relations.

Australian legislation enables the control of military and dual-use exports by:

- Requiring that a permit be in place to export, supply, broker or publish controlled military or dual-use goods, software and technology (which are specified on the Defence and Strategic Goods List (DSGL) in certain circumstances); and
- Providing the Minister for Defence with the discretionary power to prohibit the export of uncontrolled goods and technology (which are not specified in the DSGL) or the provision of services in certain circumstances. These are referred to as 'catch all' controls.

Controlled goods, software and technology

The DSGL is Australia's list of military and dual-use goods, software and technology that has been designated as 'controlled'. Controlled goods, software and technology require a permit issued by DEC when exported, supplied, brokered or published. The DSGL is drafted in accordance with government policy, Australia's international obligations and lists of controlled goods and technologies agreed by the multilateral export control regimes which Australia is a member of.

The DSGL is divided into two parts:

- Part One (Munitions List) specifies goods and technologies specifically designed or adapted for military end uses.
- Part Two (Dual-Use List) specifies goods and technologies designed for a commercial purpose but which also could also be used for military (including weapons of mass destruction) purposes.

The *Customs Act 1901* provides for regulations to be made to control the physical export of DSGL goods, software and technology. The controls are specified in the

Customs (Prohibited Exports) Regulations 1958 (Customs PE Regulations).

The *Defence Trade Controls Act 2012* (the DTC Act) regulates the intangible (electronic) supply and publication of controlled technology and the brokering of controlled goods and technology. Those controls are specified in the DTC Act and the Defence Trade Controls Regulation 2013 (DTC Regulation).

The Customs PE Regulations, the DTC Regulations and the DTC Act contain a number of exceptions including:

1. Goods and tangible technology owned by a listed defence force, where it has been imported by, and is exported by, that defence force or a member of that defence force who has been issued with the goods (Note: does not apply to ML7, 1C350–1C354 and 1C450) (13EA(1) Customs PE Regulations).
2. Goods and tangible technology imported and exported by an air security officer in certain circumstances (13EA(2) Customs PE Regulations).
3. The export is under the AUS-US Defence Trade Cooperation Treaty (13EA(5) Customs PE Regulations).
4. DSGL technology is temporarily exported by the exporter for their own use and will not be transferred, disclosed or used by any other person outside Australia (13EA(6) Customs PE Regulations).
5. DSGL technology is exported after being temporarily imported into Australia for the exporter's own use and is returning to the country of import with the exporter (13EA(7) Customs PE Regulations).
6. The supply of DSGL software or technology is made orally, is not the provision of access to technology and is not for a military end-use or for use in a weapons of mass destruction program (s10(1A) DTC Act).
7. The supply of DSGL software or technology is under the AUS-US Defence Trade Cooperation Treaty (s10(2) DTC Act).
8. The supply of DSGL software or technology is by or to a member of the ADF, AFP or state/territory police, an APS member, ASIO or ASIS employee in the course of their duties (s10(3) DTC Act).
9. The supply of DSGL software or technology is of DSGL Part 2 (Dual-Use List) technology and is preparatory to the publication of the technology to the public (s10(3A) DTC Act).
10. The supply is of software and technology by tangible means and the exporter has a permit under regulation 13E of the Customs PE Regulations, which covers the supply of the technology (s6 DTC Regulation).
11. The software and technology has already been lawfully made available to the public or to a section of the public (s14A(2) DTC Act).



Both the Customs PE Regulations and the DTC Regulation require the same 12 legislative criteria to be considered in assessing whether an export or supply would be prejudicial to Australia's security, defence or international relations. These criteria broadly cover foreign policy, human rights, national security, regional security and Australia's international obligations and commitments, including under the Arms Trade Treaty.

Uncontrolled goods, software and technology

The *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (WMD Act) provides the Minister for Defence with the power to prohibit the supply or export of uncontrolled goods and the supply of any goods that may be used in, or the provision of services (including intangible supply of technology) that may assist, the development, production, acquisition or stockpiling of weapons capable of causing mass destruction or missiles capable of delivering such weapons.

Section 112BA of the *Customs Act* provides the Minister for Defence with the power to prohibit the physical export of uncontrolled goods, software and technology (not including the intangible supply of uncontrolled technology) that may be for use in military operations, exercises or other activities that are prejudicial to Australia's security, defence or international relations.

Legislative criteria

As set out in section 8 of the DTC Regulation⁴⁷, the criteria for deciding whether things are prejudicial to security, defence or international relations of Australia are as follows:

1. The risk that the DSGL technology or goods may go to or become available to a country upon which the Security Council of the United Nations or Australia has imposed a sanction.
2. The risk that the DSGL technology or the goods may go to or become available to a country where it may be used in a way contrary to Australia's international obligations or commitments.
3. The risk that the DSGL technology or the goods may be used to commit or facilitate serious abuses of human rights.
4. Whether the supply of the DSGL technology or the goods, or the publication of the DSGL technology:
 - a. may aggravate:
 - ii. an existing threat to international peace and security or to the peace and security of a region; or
 - iii. a particular event or conflict of concern to Australia; or
 - d. may otherwise contribute to political instability internationally or in a particular region.
5. Whether the DSGL technology or the goods may:
 - a. be used for conflict within a country or for international conflict by a country; or
 - b. further militarise conflict within a country.
6. Whether the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may compromise or adversely impact Australia's defence or security interests, its obligations to its allies or its international obligations and responsibilities.
7. Whether the DSGL technology or the goods may go to or become available to a country that has policies or strategic interests that are inconsistent with the policies and strategic interests of Australia or its allies.
8. The risk that the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may:
 - a. adversely impact Australia's military capability; or
 - b. substantially compromise an Australian defence operation; or
 - c. increase the military capability of a country that is a potential adversary of Australia.
9. The risk that the DSGL technology or the goods may go to or become available to a country:
 - a. that is developing, or is reasonably suspected of developing:
 - ii. weapons that may be capable of causing mass destruction; or
 - iii. the means of delivering such weapons; or
 - d. that supports, or is reasonably suspected of supporting, terrorism; or
 - e. whose actions or foreign policies pose a risk of major disruption in global stability or the stability of a particular region.
10. Whether the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may lead to a reaction by another country that may damage Australia's interests or relations with the other country or with a particular region.
11. Whether the DSGL technology or the goods may be used for mercenary activities or a terrorist or other criminal activity.
12. Whether preventing the supply of the DSGL technology or the goods, or the publication of the DSGL technology, may have an adverse effect on Australian industry, trade and economic prosperity to the extent that it may adversely impact the security, defence or international relations of Australia.

47 The Defence Trade Controls Regulation 2013 can be found at: <https://www.legislation.gov.au/Details/F2018C00256/Download>

International commitments

Australia participates in a number of multilateral export control regimes. These regimes are committed to establishing best practice and consistency in the export control frameworks of participating states. Australia participates in four major multilateral export control regimes: the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Australia is also a signatory to and supporter of a number of other arms control and non-proliferation agreements and

initiatives, including the Arms Trade Treaty, the Biological Weapons Convention and the Chemical Weapons Convention. Australia’s non-proliferation initiatives are coordinated by DFAT.

Australia implements two types of sanctions, managed by DFAT:

- United Nations Security Council sanctions, which Australia must impose as a member of the United Nations; and
- Australian autonomous sanctions, which are imposed as a matter of Australian foreign policy.

Table 26: Australia’s international commitments

<i>Arms Trade Treaty</i>	Australia is a signatory to the Arms Trade Treaty, which establishes common global standards for the international trade in conventional weapons.
<i>Australia Group</i>	Australia is the permanent chair of the Australia Group, which is an informal export control regime that aims to prevent the proliferation of chemical and biological weapon-related materials and technologies.
<i>Australian Autonomous Sanctions</i>	The Australian Government imposes and implements Australian autonomous sanctions regimes as a matter of Australian foreign policy.
<i>Biological Weapons Convention</i>	Australia is party to the Biological Weapons Convention, which prohibits state parties from developing, producing, stockpiling or otherwise acquiring or retaining biological and toxin weapons and their means of delivery, and governs their destruction.
<i>Chemical Weapons Convention</i>	Australia is a signatory to the Chemical Weapons Convention, which aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by state parties.
<i>Missile Technology Control Regime</i>	Australia is a member of the Missile Technology Control Regime, the aim of which is to restrict the proliferation of systems capable of delivering weapons of mass destruction.
<i>Nuclear Non-Proliferation Treaty</i>	Australia is a signatory to the Nuclear Non-Proliferation Treaty (NPT), which aims to prevent the spread of nuclear weapons and promote disarmament. Australia has export controls in place to ensure compliance with NPT obligations.
<i>Nuclear Suppliers Group</i>	Australia is a member of the Nuclear Suppliers Group, which seeks to contribute to the non-proliferation of nuclear weapons.
<i>United Nations Security Council Sanctions</i>	Australia is obligated to implement sanctions imposed by the UNSC. These sanctions may include restrictions on the export of certain goods to specific countries or entities that are subject to United Nations sanctions.
<i>Wassenaar Arrangement</i>	Australia is a participating state in the Wassenaar Arrangement, which is a multilateral export control regime that seeks to promote transparency and responsibility in the trade of conventional arms and dual-use items that could have military applications.



APPENDIX 3: Foreign Country List

The 'Foreign Country List' (FCL) is a legislative instrument made under s15(4A) of the *Defence Trade Controls Act 2012* by the Minister for Defence.⁴⁸

The countries listed on the FCL satisfy two criteria:

1. they are members of four of the major international export control regimes (the Wassenaar Arrangement, Nuclear Suppliers Group, Missile Technology Regime and the Australia Group); and
2. the Australian Government considers that these countries have reliable export controls.

The countries listed on the FCL are:

- Austria
- Belgium
- Bulgaria
- Canada
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- New Zealand
- Norway
- Poland
- Portugal
- Spain
- Sweden
- Switzerland
- United Kingdom
- United States

APPENDIX 4: Vignettes highlighting the practical difference between current and proposed legislation

Vignette 1 – Australian business reliant on importing controlled goods and technology from the US

Company A is an Australian small to medium enterprise (SME) that manufactures critical components for armoured vehicles utilised by the Australian Defence Force (ADF). Company A imports United States Munitions List (USML) controlled machinery, including associated technical data for the operation and maintenance of the machinery, from the United States (US) in order to manufacture the componentry onshore.

Company A has foreign nationals from countries not listed on the FCL, working in both their corporate and technical teams based in Australia.

Option 1 – status quo

Company A's US supplier must apply for an export licence from US authorities before the controlled machinery and its spare parts can be shipped from the US to Australia.

Company A stockpiles the spare parts to avoid the time delays caused by the licencing process in the US. This increases the cost of doing business, which Company A must factor into its pricing model for the componentry.

Company A has received technical data under an export licence to enable them to perform maintenance and

repair on the machinery. Under the conditions of the US export licence, Company A is required to seek further authorisations from the US for a foreign national to access the controlled technical data.

Company A subsequently hires a foreign national in their technical team who accesses the controlled technical data to perform their duty. Company A will need to request an amendment to the export licence to include necessary authority to provide the foreign national access to controlled technical data.

Option 2A – legislative changes with complimentary exceptions

In the new licence-free environment, Company A's US supplier is no longer required to apply for an export licence when shipping the USML-controlled machinery and spare parts to Australia. This also means that the company can hold fewer spare parts now and reinvest the funds towards a new production line.

Company A subsequently hires a foreign national in their technical team who accesses the controlled technical data to perform their duty. As this technical data is controlled on the DSGL, a deemed supply permit will be required if provided to a foreign person who is not from a country listed on the FCL. If the foreign person is or has held citizenship of a foreign country (including a proscribed country), a US licence will still be required.

⁴⁸ The Foreign Country List and Explanatory Statement can be found at: <https://www.legislation.gov.au/Details/F2016L00548>

Vignette 2 – Australian business that exports DSGL controlled technology to the UK

Company B is an Australian electronics manufacturer who regularly exports circuits to the United Kingdom (UK). The circuits and associated technical data are controlled on the DSGL.

Company B employs foreign nationals from both FCL and non-FCL countries. These foreign nationals work in their corporate and technical teams based in Australia.

Option 1 – status quo

Currently, Company B applies for an export permit from Australian authorities before the DSGL controlled circuits can be physically exported to their customer in the UK.

Their UK customer has stockpiled spare parts in the UK to avoid the time delays, caused by export permit requirements, in receiving goods from Australia. This increases the cost of doing business with Company B in the long term and the UK customer is thinking about sourcing similar, but lower quality, goods locally from the UK to avoid these delays.

To remain competitive in the UK market and retain their customer, Company B is considering establishing warehouses in the UK to stock spare parts which will better meet customer demands. This will increase costs to the Australian business due to higher operational and financing costs from additional warehousing and inventory being carried.

Option 2A – legislative changes with complementary exceptions

Company B is no longer required to apply for an export permit before exporting their products to the UK. They can now ship DSGL controlled circuits on demand to the UK, and no longer need to establish and operate additional warehouses in the UK.

As the company's IT system holds the technical know-how (DSGL technology) to manufacture the DSGL controlled circuits, the company will need to review the system's access controls and determine whether a deemed supply permit is required where foreign nationals from non-FCL countries have access to the DSGL technology.

Company B has self-reviewed their staff's status and while they have foreign nationals working in their technical team, they qualify for the regular employee exceptions. They did identify that current access control in their ICT system and office means corporate staff can potentially access the controlled DSGL technology. Company B also has foreign nationals from non-FCL countries working in their marketing team that could potentially (and inadvertently) access the DSGL technology. The company has therefore applied for a deemed supply permit for the foreign nationals from non-FCL countries.

The company is also considering investing in upgrading their ICT system and office design to tighten their access controls under the new Australian export control

legislation. Their plan is, once these new measures are in place, a deemed supply permit may no longer be required for foreign nationals from non-FCL countries in their corporate teams as it will prevent them from accessing the DSGL technology.

Vignette 3 – Australian business exporting controlled technology to non-AUKUS partners

Company C is an Australian manufacturer who regularly exports controlled navigation equipment used in Naval Battleships to Foreign Country X. The equipment (including technical data) they send for repair and maintenance purposes is controlled on the DSGL.

Company C has foreign nationals from non-FCL countries working in both their corporate and technical teams based in Australia.

Option 1 – status quo

Company C currently applies for an export permit from Australian authorities before their controlled equipment and technical data can be exported to their customers in Foreign Country X.

Company C faced difficulty in sourcing qualified professionals that had both the relevant experience and Australian citizenship or permanent residency. As such, they have decided to broaden their search to include foreign nationals who are not Australian citizens or permanent residents in Australia.

Company C found a suitable person, foreign national 1, to fill a key role in their product development process. After hiring, Company C decides to share DSGL technology with foreign national 1 so that they can fulfil their role. No permits are required under Australian export control legislation.

Company C learns that their customer has recently hired a new person in their technical team, foreign national 2, who is a citizen of Foreign Country X and who is not an Australian citizen or permanent resident. This customer is sharing DSGL technology with foreign national 2 to carry out repair and maintenance activities. No permits are required under Australian export control legislation.

Option 2A – legislative changes with complementary exceptions

Company C is still required to apply for an export permit when exporting their controlled equipment to customers in Foreign Country X.

Company C is required to apply and obtain a deemed supply permit so that they can continue to share DSGL technology with foreign national 1 in their product development team.

Company C is required to apply and obtain a deemed re-supply permit for its customer in Foreign Country X to provide foreign national 2 access to the DSGL controlled



technology. Company C is required to update their sales contract with their customers and operational policies to inform their customers that a deemed re-supply permit is required to supply DSGL technology to a foreign person.

Company C is required to update their sales contract with their customers and operational policies to inform their customer that the Australian products are now subject to re-supply controls. Company C must review the permit conditions before re-exporting or re-transferring and must obtain permits from Australian authorities if the customer plans to re-export or re-transfer their equipment.

Vignette 4 – Australian business re-exporting US and UK controlled technology

Company D is an Australian manufacturer that regularly imports controlled machinery from the UK and the US to produce marine acoustic equipment. After production is completed, Company D on-sells their goods to a business in Foreign Country Y. The goods and technology that Company D sends to Foreign Country Y for repair and maintenance purposes are controlled on the DSGL.

Company D employs foreign nationals from both FCL and non-FCL countries working in their corporate and technical teams based in Australia.

Option 1 – status quo

Company D's UK and the US suppliers apply for an export licence from the UK and the US authorities respectively before the machinery can be shipped to Australia.

Company D also applies for a re-export licence from the US authorities and an export permit from the Australian authorities before the goods and technology can be exported and supplied to Foreign Country Y.

Under the US export licence, Company D has also received technical data for installation purposes and requested an amendment of the export licence to include necessary authorisation for the foreign nationals to access technical data to perform their duties.

Company D also supplies technology to their customer in Foreign Country Y for maintenance purposes of the Australian products. The customer requested an amendment of the US export licence to include necessary authorisations so that they can share the information with a foreign national working in their technical team.

Option 2A – legislative changes with complementary exceptions

Company D's UK and the US suppliers are no longer required to apply for an export licence from the UK and the US authorities. Company D is still required to apply for a re-export licence to re-export their products with embedded controlled technology from the US to Foreign Country Y. Company D would require an export permit from the Australian authorities to ship its products to Foreign Country Y. This means that the company can hold less inventory for machinery and equipment (given the reduced

likelihood of delays) and instead direct the funds to other areas in the business.

Company D has identified that a foreign national working in their technical team is from a non-FCL country and does not qualify for the regular employee exception. Company D applies for a deemed supply permit from Australian authorities so that they can continue sharing technical information with this employee.

Company D is required to update their sales contract with their customers and operational policies to inform their customers that the Australian products are now subject to re-export and re-transfer controls. Company D must review the permit conditions before re-exporting or re-transferring and must obtain permits from Australian authorities if the customer plans to re-export or re-transfer their equipment.

Vignette 5 – Australian business producing dual-use goods locally

Company E is a small local business in Australia that produces dual-use goods listed on the DSGL and sells them within Australia. In developing their products, they do not rely on any imported controlled technology. The company has not exported their products before and has no plan to do so in the future.

Company E has foreign nationals working from non-FCL countries in their technical team based in Australia.

Option 1 – status quo

Company E's activities are not captured under any export control legislations given it does not export its product outside of Australia and does not import foreign export controlled technology to enable production.

Option 2A – legislative changes with complementary exceptions

Company E is aware of their new obligations.

Upon review, Company E identified that they have two foreign nationals who are regular employees working in their technical team with access to controlled DSGL technology. One of the foreign nationals is from a FCL country and the other is not from a FCL country. Company E does not need to apply for a deemed supply permit from Australian authorities for the foreign national from the FCL country.

If the non-FCL foreign national is required to access the controlled DSGL technology, Company E is required to apply for a deemed supply permit to provide them access.

Vignette 6 – Australian start-up and research organisation collaborating with US counterparts on controlled technology

A university in Australia and a university in the US entered into a research partnership to design satellites several years ago. Due to intent to publish, the project has been exempt from requiring export licences or permits from the US or Australia.

The project team have now decided that it is commercially viable to patent their research. The researchers set up a spin-off company based in Australia, Company F, focused on the provision of their satellites to monitor air traffic from space. The goods are dual-use. The goods have military capability, but they have not been specially designed, or modified, for military use.

Company F has foreign nationals from a number of countries, including those not listed on the FCL, working in the company as well as in their supply chain.

Company F continues to collaborate with US counterparts involved in the research partnership.

Option 1 – status quo

Research Phase: The intent to publish exempts the need for the researchers to obtain a licence from the US or Australia to collaborate.

Commercialisation: Following commercialisation of the research partnership, if there is no longer an intent to publish, Company F would require a licence from the US and/or a permit from Australia to transfer controlled goods or technology between the US and Australia. Company F will need to request that the US export licence include all necessary authorisation to facilitate access by all foreign nationals (including supply chains) who require access to the technology.

Option 2A – legislative changes with complementary exceptions

Research Phase: The intent to publish exempts the need for the researchers to obtain a licence from the US or Australia to collaborate.

Commercialisation: Company F would not require a licence from the US or permit from Australia to transfer controlled goods or technology between the US, Australia and the UK.

Company F would not require a licence to transfer controlled DSGL technology to foreign persons from FCL countries who are regular employees, of the company within Australia.

Company F would be required to obtain a deemed supply permit to transfer controlled DSGL technology to foreign persons from non-FCL countries who are regular employees of the company within Australia.

Vignette 7 – Australian start-up and higher education institution undertaking research in Australia

Company I is an Australian start-up which is in a research collaboration with University J in Australia. All individuals involved in the project are regular employees of Company I and University J.

The research collaboration does not qualify for the basic scientific research exception given Company I's involvement to commercialise the research.

Company I and University J both have foreign nationals from non-FCL countries who are regular employees accessing the DSGL technology.

Option 1 – status quo

Company I and University J are not required to obtain a permit to collaborate within Australia.

Option 2A – legislative changes with complementary exceptions

Company I and University J will be required to obtain a deemed supply permit to transfer any DSGL technology to foreign persons from non-FCL countries who are regular employees within Australia.

Vignette 8 – Australian employee providing DSGL services to foreign persons

An Australian citizen who is an employee of an Australian company has significant knowledge about sensitive naval nuclear propulsion components listed in Part 1 (Munitions List) of the DSGL. The employee is subsequently offered a job in Foreign Country H, which is not listed on the FCL, to work on their search and rescue submarine program, where the employee will use their know-how to further the search and rescue submarine program.

Option 1 – status quo

The employee would not be required to obtain a permit for the provision of DSGL services.

Option 2A – legislative changes with complementary exceptions

The employee would be required to seek a DSGL services permit for the provision of DSGL services prior to commencing their job in Foreign Country H.



APPENDIX 5: List of in scope industries and occupations

The below table lists out the in scope industries and occupations used in estimating the likely workforce that may be affected by the proposed new controls.

Industries	Occupations
Basic Chemical and Chemical Product Manufacturing	Defence Force Senior Officer
Basic Chemical Manufacturing	Sales and Marketing Manager
Industrial Gas Manufacturing	Corporate Services Manager
Basic Organic Chemical Manufacturing	Finance Manager
Basic Inorganic Chemical Manufacturing	Research and Development Manager
Basic Polymer Manufacturing	Construction Project Manager
Synthetic Resin and Synthetic Rubber Manufacturing	Project Builder
Other Basic Polymer Manufacturing	Engineering Manager
Fertiliser and Pesticide Manufacturing	Importer or Exporter
Fertiliser Manufacturing	Production Manager (Manufacturing)
Explosive Manufacturing	Supply and Distribution Manager
Other Basic Chemical Product Manufacturing	Chief Information Officer
Polymer Product and Rubber Product Manufacturing	ICT Project Manager
Polymer Product Manufacturing	Commissioned Defence Force Officer
Polymer Film and Sheet Packaging Material Manufacturing	Laboratory Manager
Rigid and Semi-Rigid Polymer Product Manufacturing	Mathematician
Polymer Foam Product Manufacturing	Organisation and Methods Analyst
Tyre Manufacturing	Patents Examiner
Paint and Coatings Manufacturing	ICT Business Development Manager
Other Polymer Product Manufacturing	Technical Sales Representatives
Natural Rubber Product Manufacturing	Ship's Engineer
Primary Metal and Metal Product Manufacturing	Marine Surveyor
Iron Smelting and Steel Manufacturing	Other Spatial Scientist
Basic Ferrous Metal Product Manufacturing	Chemical Engineer
Iron and Steel Casting	Materials Engineer
Steel Pipe and Tube Manufacturing	Civil Engineer
Basic Non-Ferrous Metal Manufacturing	Geotechnical Engineer
Alumina Production	Electrical Engineer
Aluminium Smelting	Electronics Engineer
Copper, Silver, Lead and Zinc Smelting and Refining	Industrial Engineer
Other Basic Non-Ferrous Metal Manufacturing	Mechanical Engineer
Basic Non-Ferrous Metal Product Manufacturing	Production or Plant Engineer
Non-Ferrous Metal Casting	Aeronautical Engineer
Aluminium Rolling, Drawing, Extruding	Biomedical Engineer
Other Basic Non-Ferrous Metal Product Manufacturing	Engineering Technologist
Fabricated Metal Product Manufacturing	Naval Architect / Marine Designer

Industries	Occupations
Iron and Steel Forging	Engineering Professionals
Structural Metal Product Manufacturing	Chemist
Structural Steel Fabricating	Life Scientist (General)
Prefabricated Metal Building Manufacturing	Biochemist
Architectural Aluminium Product Manufacturing	Biotechnologist
Metal Roof and Guttering Manufacturing (except Aluminium)	Life Scientists
Other Structural Metal Product Manufacturing	Physicist
Metal Container Manufacturing	Natural and Physical Science Professionals
Boiler, Tank and Other Heavy Gauge Metal Container Manufacturing	Developer Programmer
Other Metal Container Manufacturing	Software Engineer
Sheet Metal Product Manufacturing (except Metal Structural and Container Products)	Software Tester
Other Fabricated Metal Product Manufacturing	Cyber Security Engineer
Spring and Wire Product Manufacturing	Penetration Tester
Nut, Bolt, Screw and Rivet Manufacturing	Software and Applications Programmers
Metal Coating and Finishing	Systems Administrator
Other Fabricated Metal Product Manufacturing	Cyber Governance Risk and Compliance Specialist
Transport Equipment Manufacturing	Cyber Security Advice and Assessment Specialist
Motor Vehicle and Motor Vehicle Part Manufacturing	Cyber Security Analyst
Motor Vehicle Manufacturing	Cyber Security Architect
Motor Vehicle Body and Trailer Manufacturing	Cyber Security Operations Coordinator
Automotive Electrical Component Manufacturing	Computer Network and Systems Engineer
Other Motor Vehicle Parts Manufacturing	Telecommunications Network Engineer
Other Transport Equipment Manufacturing	Chemistry Technician
Shipbuilding and Repair Services	Electronic Engineering Draftsperson
Boatbuilding and Repair Services	Electronic Engineering Technician
Aircraft Manufacturing and Repair Services	Mechanical Engineering Technician
Other Transport Equipment Manufacturing	Metallurgical or Materials Technician
Machinery and Equipment Manufacturing	Other Draftsperson
Professional and Scientific Equipment Manufacturing	Building and Engineering Technicians
Photographic, Optical and Ophthalmic Equipment Manufacturing	ICT Customer Support Officer
Other Professional and Scientific Equipment Manufacturing	Radiocommunications Technician
Computer and Electronic Equipment Manufacturing	Telecommunications Field Engineer
Computer and Electronic Office Equipment Manufacturing	Telecommunications Network Planner
Communication Equipment Manufacturing	Motor Mechanic (General)
Other Electronic Equipment Manufacturing	Aircraft Maintenance Engineer (Avionics)
Electrical Equipment Manufacturing	Aircraft Maintenance Engineer (Mechanical)
Electric Cable and Wire Manufacturing	Aircraft Maintenance Engineer (Structures)
Electric Lighting Equipment Manufacturing	Fitter and Turner
Other Electrical Equipment Manufacturing	Metal Machinist (First Class)
Pump, Compressor, Heating and Ventilation Equipment Manufacturing	Precision Instrument Maker and Repairer



Industries	Occupations
Pump and Compressor Manufacturing	Vehicle Body Builder
Fixed Space Heating, Cooling and Ventilation Equipment Manufacturing	Electrician (General)
Specialised Machinery and Equipment Manufacturing	Communications Operator
Agricultural Machinery and Equipment Manufacturing	Electronic Instrument Trades Worker (General)
Mining and Construction Machinery Manufacturing	Telecommunications Technician
Machine Tool and Parts Manufacturing	Chemical Plant Operator
Other Specialised Machinery and Equipment Manufacturing	Gas or Petroleum Operator
Other Machinery and Equipment Manufacturing	Power Generation Plant Operator
Lifting and Material Handling Equipment Manufacturing	Technicians and Trades Workers
Other Machinery and Equipment Manufacturing	Defence Force Member - Other Ranks
Air and Space Transport	Plastics Fabricator or Welder
Professional, Scientific and Technical Services (except Computer System Design and Related Services)	Plastics Production Machine Operator (General)
Scientific Research Services	Reinforced Plastic and Composite Production Worker
Architectural, Engineering and Technical Services	Plastics and Rubber Production Machine Operators
Surveying and Mapping Services	Chemical Production Machine Operator
Engineering Design and Engineering Consulting Services	Chemical Plant Worker
Other Specialised Design Services	
Scientific Testing and Analysis Services	
Other Professional, Scientific and Technical Services	
Other Professional, Scientific and Technical Services	
Computer System Design and Related Services	
Machinery and Equipment Repair and Maintenance	
Electronic (except Domestic Appliance) and Precision Equipment Repair and Maintenance	
Other Machinery and Equipment Repair and Maintenance	
Other Repair and Maintenance	
Tertiary Education	
Higher Education	
Defence	

