

# Chapter 3

## Conclusion and recommendations

### Conclusion

3.1 The implementation of the Defence Trade Controls Act 2012 is nearing the halfway point. The committee is pleased to note the work done to date and, in particular, the consultative atmosphere created by the Strengthened Export Controls Steering Group.

3.2 At this halfway mark, with legislative amendments and consequent changes to the regulations being examined, the committee notes the concerns raised by submitters that any legislative amendments will be subject to thorough consultation. The committee wholeheartedly supports the words of Professor Chubb in his letter to the Minister for Defence and the Minister for Industry, covering the second Strengthened Export Controls Steering Group report:

The Steering Group considers that it is important that the testing process also includes revised draft legislation, so that legislative amendments recommended by the Steering Group have already been tested in practice and exposed to broader stakeholder comment. I seek your support in enabling this aspect of testing to occur in a timely way.<sup>1</sup>

3.3 The committee is also supportive of the Steering Group's next steps regarding procedural fairness and regular legislative review which is responsive to stakeholder needs over time. The committee urges Defence to be mindful of the consultation issues which were detailed in the committee's Interim Report on the Defence Trade Controls Bill 2011 and to support the Steering Group in its efforts to ensure any legislative amendments will be workable for all stakeholders.

3.4 The University of Sydney argued in its submission that at least four to six weeks are required for stakeholders to consider an exposure draft of any amendment bill. The committee agrees with this opinion and expects Defence to do everything it can to facilitate adequate time for stakeholders to consider any legislative amendments. The committee is also mindful that any legislative amendments will affect the Defence Trade Controls regulations. It strongly advises Defence to ensure that there is an appropriate amount of time allocated to revising and testing any changes to the regulations as a result of proposed legislative amendments.

3.5 From the evidence received from the steering group, the committee is satisfied that the steering group process is working to ameliorate the concerns of all stakeholders, including industry. It is with concern, however, that the committee notes

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1 Strengthened Export Controls Steering Group, *Second Report*, 12 December 2013  
<https://exportcontrols.govspace.gov.au/steering-group/secsgr-reports/>

that similar progress is not being made with DECO. Correspondence received confidentially by the Committee indicates that in one instance at least DECO is amending some of its current processes, but that unlike the steering group, DECO seems intent on increasing the scope of items included on the military list and raising the barriers to obtaining export approval. The confidential example provided indicates that in this case, civilian items that have had been exported for some years to low risk destinations are being restricted.

3.6 The committee notes that DECO has subsequently met with industry to work through these specific issues and that significant progress appears to have been made to alleviate its concerns. The committee, however, expects that DECO will continue to work to implement the findings of the pilot program and will align its current processes with the intent of the steering group's work, seeking where possible to minimise the classification of items as military and optimise certainty for companies seeking approvals.

3.7 Overall, the committee believes that Professor Chubb and the Strengthened Export Controls Steering Group, the organisations involved in the pilot program, as well as DECO and Defence, should be commended for the way in which they have been able to work together on the implementation of the Defence Trade Controls Act 2012. In the committee's view, the consultative model of the Steering Group has significant benefits and the committee suggests that Defence look to this model as it moves forward. The goodwill created by the Steering Group process is also valuable and the committee urges that Defence use this situation to create a lasting consultative mechanism for communicating with stakeholders about future changes to export controls measures.

3.8 The committee acknowledges the hard work done by the Steering Group to build goodwill in the consultative process and asks that Defence build on this by reporting to the committee regarding the process it will use for consulting stakeholders on any proposed legislative amendments and changes to the regulations for the Defence Trade Controls Act 2012.

### **Recommendation 1**

**The committee recommends that Defence report to the committee on the process it will use for consulting stakeholders on any proposed legislative amendments and changes to the regulations for the Defence Trade Controls Act 2012 before the committee's next six-monthly review report. The committee expects the report will help reassure stakeholders that the consultative process embodied by the Steering Group will not fail at the conclusion of the implementation period.**

### **Recommendation 2**

**Further to Recommendation 1 in the committee's first progress report, the committee is keen to ensure that the intent of the steering group guides any changes in the day-to-day processes of DECO as this will assist transition to the provisions of the Defence Trade Controls Act 2012. The committee therefore**

**recommends that DECO examine the processing of applications and licences in relation to measures being taken to implement the findings of the pilot program and provide a report to the committee prior to the committee's next six-monthly report. The committee is particularly interested in how DECO will implement the steering group findings as regards industry applications.**

**Chair  
Senator Alan Eggleston**

