



Babcock Pty Ltd

Level 9, 70 Franklin Street
ADELAIDE
South Australia 5000
AUSTRALIA

Postal Address:
(GPO BOX 1275, Adelaide)
(South Australia 5001)
(AUSTRALIA)

Tel +61 (0)8 8440 1400
www.babcock.com.au

1 February 2024

Mr Mark Fitt
Committee Secretary
Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: fadt.sen@aph.gov.au

Dear Mr Secretary,

RE: Babcock Australasia Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee Inquiry into the *Defence Trade Controls Amendment Bill 2023*

Thank you for the opportunity to make a submission to aid the Committee's inquiry into the *Defence Trade Controls Amendment Bill 2023* (the Bill). Babcock is of the belief that limited industry engagement and a compressed consultation period has resulted in several issues that must be brought to the Committee's attention and given adequate consideration before the Bill comes into effect.

While Babcock supports the Government's endeavours to strengthen export controls and facilitate technology transfer between AUKUS partners, we believe that the Bill, as it stands, would result in unintended consequences, leading to considerable adverse impacts on the operations within the defence industry, emanating from the lack of a coherent solution architecture to support the proposed new trade control ecosystem.

Babcock International Group is a global defence and security company, operating across the UK, Australasia, Canada, France and South Africa, providing a range of sustainment and product solutions to enhance our customers' defence capabilities and critical assets. As such, Babcock will be directly affected by the amendments, matters that will be addressed in section three of the attached submission.

We strongly believe the proposed reforms would benefit from further evaluation, giving consideration to the concerns raised in the attached submission. Babcock is committed to actively engaging in constructive dialogue to arrive at mutually beneficial and effective legislative outcomes. For this reason, I welcome the opportunity to address the Committee on behalf of Babcock to provide further details and answer any additional questions.

Thank you again for the opportunity to provide feedback on this significant piece of legislation. It is our view that proper consideration of industry concerns will help deliver an enhanced Australian Trade Controls framework that will assist in delivering the tri-national objectives of the AUKUS Alliance.

Yours sincerely,

Jessica Rankin

Head of Trade Controls, Security and Facilities – Australasia

Jessica.Rankin@babcock.com.au

Introduction:

Babcock's submission on the *Defence Trade Controls Amendment Bill 2023* (the Bill) is structured to first address the logistical issues associated with limited consultation and lack of cohesion, next, to provide a high level analysis of the specific legislative concerns before finally addressing the practical implications of the Bill as it stands through a Babcock impact statement.

1. Compressed Industry Consultation

While we understand the Government's desire to quickly progress this Bill, we believe that the introduction of this legislation alongside significant penalties without a more fulsome consultation with industry, will result in unnecessary risks to businesses and create uncertainty in the regulatory landscape at a time when we seek to demonstrate the robustness of our trade controls ecosystem to our allies.

It has become apparent that the drafting process for this legislation has occurred in isolation to other Government endeavours to review Australia's Defence Trade Controls. This disjointed approach has resulted in feedback, submissions and roundtable discussions being sought and conducted from different parts of Government, in different formats on essentially the same subject matter. This lack of coherence, has made the landscape unnecessarily challenging for industry to navigate and has resulted in disappointment that the Bill, as it stands, does not reflect holistically the productive conversations or legitimate concerns raised by industry during these parallel processes.

It is integral to the efficacy of the system that Defence Export Controls (DEC) implements reforms that give due regard to the input of industry stakeholders. As such, we are concerned that if these reforms are enforced without further consideration, assessment of impact and necessary funding for support measures, there will be significant adverse effects on their implementation by Government and industry's ability to comply.

Babcock supports the overall strengthening of export controls, however, would encourage the Government to give further consideration to the reforms proposed in this Bill and support mechanisms for its implementation, prior to its introduction into the Parliament. These considerations should include educational initiatives and other methods to bolster both industry and academia's understanding of the Bill's impacts on our operations and our likelihood of compliance. Without this, we believe there is likely to be significant unintended consequences for both industry and government.

2. High Level Specific Proposal Considerations

2.1 Supply of Defence and Strategic Goods List (DSGL) technology from in Australia to outside Australia (exports).

The Bill's Explanatory Memorandum acknowledges that the Bill seeks to establish a national exemption to the requirements of the *Defence Trade Controls Act 2012* (the Act) for the United Kingdom and the United States to optimise technology transfer among and between AUKUS partners, hence the 'relevant supply' definition at subsection 5C(1). However, this definition is limited by any DSGL goods or DSGL technology excluded by a determination made by the Minister. As such, any excluded DSGL goods or DSGL technology would continue to be subject to permit requirements, even if they are to be supplied to the United Kingdom or the United States. Presumably this exclusion mechanism is intended to protect certain sensitive technologies, however, if numerous DSGL goods and/or DSGL technology are excluded, it effectively defeats the purpose of an export licence-free environment among and between AUKUS partners.

2.2 Supply of DSGL technology to a foreign person within Australia (deemed exports).

Operationally this would require us to screen all employees, suppliers, and various other entities to determine if they are an 'Australian person' according to the definition to be added to subsection 4(1). For further information, please refer to Babcock's submission to the *Defence Trade Controls Act 2012* Review on the human rights and equal opportunity issues that this causes for all involved.

While an employee's citizenship would be within their employer's knowledge, it is unclear how a deemed export to a natural person who is not an employee can be determined without breaching either the *Privacy Act 1988* or state discrimination legislation. While the draft Bill provides an exception for persons with a covered security clearance, if a person does not hold such a clearance, the only way to determine whether DSGL technology can be supplied to that person without a permit would be to seek information regarding that person's citizenship and/or permanent residency status.

2.3 Supply of DSGL goods or technology, previously exported or supplied from Australia, from a foreign country to another country, or within the same foreign country (deemed re-exports and deemed re-supplies).

Operationally, this would require us to obtain End User declarations from all overseas recipients of DSGL goods and/or DSGL technology declaring that they will not transfer those goods or technology to any other entity. This represents a significant additional compliance burden. Additionally, it is unclear who is to obtain a permit for deemed re-exports or deemed re-supplies (for the current supply) – is this to be obtained by the Australian supplier who conducted the earlier supply of DSGL technology, or is this to be obtained by the recipient of the earlier supply?

2.4 Provision of DSGL services from in Australia to a foreign person.

Operationally, this would require a provider of DSGL services to determine whether the proposed recipient of DSGL services is a foreign person, which is problematic regarding non-employee natural persons for privacy and discrimination reasons discussed at section 2 above.

If the recipient is a foreign person without a covered security clearance, the DSGL services provider would need to understand the exact scope of the DSGL services to be provided, because the relevant exception is constrained to DSGL services in support of a supply of DSGL goods or DSGL technology, that solely consist of training or the performance of maintenance and do not include modification, enhancement or upgrade of the performance or capability of the goods or technology. This exception would be cumbersome to utilise in the context of a given activity because it only covers limited specified support.

2.5 Exceptions

Furthermore, the ambiguity surrounding the Australian "AUKUS - licence exceptions" raises serious concerns. These exceptions do not offer relief as they do not address the complexities inherent in the US Licensing system, thereby creating an administrative ambiguity when navigating conflicting controls.

The exceptions would likely be similar to that of the Australian Treaty of which no one has utilised, as the difficulty and navigation is too complex.

If the expectation is for companies to utilise exceptions, Government will need to be cognisant of their operations. SMEs will not be able to navigate the complexities of exceptions or other aspects of this proposed Bill.

3. Babcock Impact Assessment

If the Bill is passed in its current form, to ensure compliance with the proposed new regime, Babcock would be required to thoroughly investigate the following areas:

- a) *Existing supply permits*: understand how many existing supply permits are for supply of DSGL technology to United Kingdom (UK) or United States (US) companies, as opposed to other foreign countries. Additionally, understand which existing supply permits (to countries other than the UK or US) need to be expanded to cover additional activities such as deemed exports, deemed re-exports, deemed re-supplies and/or DSGL services.
- b) *Internal operations in relation to deemed exports*: understand how many foreign persons Babcock employs, and what DSGL technologies those foreign person Babcock employees currently receive from Babcock.
- c) *Babcock's supply chain within Australia in relation to deemed exports*: understand whether Babcock supplies any DSGL technology to foreign organisations within Australia. Additionally, understand whether Babcock supplies any DSGL technology to foreign persons employed by Australian companies.

- d) *Babcock's supply chain outside Australia in relation to deemed re-exports and re-transfers*: understand whether DSGL goods or DSGL technology originally supplied by Babcock are being re-exported to another foreign country or supplied to another foreign person within the same foreign country.
- e) *Internal operations and external operations in relation to DSGL services*: understand how many foreign person Babcock employees and receive DSGL services from Babcock. Additionally, understand whether Babcock provides any DSGL services as part of existing supplies to foreign persons or independently of any supply, and the scope/extent of those DSGL services; so that the availability of any legislative exceptions can be assessed (and conclusions documented) and, where an exception is not available, permits applied for.

Whilst significant effort has been taken in the short period available to investigate all areas above, we have also identified that the proposed new regime would require Babcock to closely monitor the following areas on an ongoing basis:

- a) The DSGL technology being supplied by Babcock to existing foreign person Babcock employees and the DSGL technology to be supplied to Babcock new starters who are foreign persons.
- b) Babcock's supply chain within Australia in relation to foreign persons employed by Australian companies (staff turnover etc.). As part of new supplier onboarding, screening suppliers in Australia for any foreign persons.
- c) Babcock's supply chain outside of Australia, including obtaining assurances from foreign companies that DSGL goods or DSGL technology will not be re-exported or re-supplied.
- d) The DSGL services being supplied by Babcock to existing foreign person Babcock employees and the DSGL services to be provided to Babcock new starters who are foreign persons.

While the UK and US exemption would result in permits not being required for supplies of DSGL technology to the UK or US, and thus potentially fewer permit applications for Babcock overall, the total time needed to comply with the Bill would dramatically increase because of the additional scenarios that Babcock must assess. Under the current Act, only exports need to be assessed, and permits obtained to authorise those exports. Under the Bill, industry would need to assess exports, deemed exports, deemed re-exports, deemed re-supplies and DSGL services. Even if an exception is available in most circumstances, industry would still be required to assess the availability of the exception and document their conclusions in relation to each specific scenario.

To highlight this, analyses and visual representations of the steps and time required to comply with the Bill can be found in the below appendices.

Appendices:

Appendix A: Defence Trade Controls Amendment Bill 2023 – Matrix

Appendix B: DTC Act – Time Spent Analysis

Appendix C: Compliance Steps flowcharts under current and future Australian export controls



Appendix A: Defence Trade Controls Amendment Bill 2023 – Matrix

Topic	Change Detail	Exceptions	Consequences
<p>Section 10 - Exports</p> <p><i>Supply of DSGL technology from in Australia to outside Australia</i></p>	<p>Limits the offence to any supply that is 'constitutional' and 'relevant'.</p> <p><u>Constitutional supply</u> Babcock Pty Ltd (BPL) is a constitutional corporation, so any supply by BPL will always be considered a 'constitutional supply'.</p> <p><u>Relevant supply</u> Any supply is relevant, unless it is to:</p> <ul style="list-style-type: none"> (a) an Australian person (b) Citizen or permanent resident of UK or US (c) UK or US company (d) UK or US Gov <p>For a supply <i>not</i> to be relevant, it needs to occur wholly at a place in Australia, UK or US. The DSGL goods or technology must also not be excluded.</p>	<p>N/A</p>	<p>BPL would not require permits for supply of DSGL technology to:</p> <ul style="list-style-type: none"> • Australian persons located overseas • UK or US citizens or permanent residents located in the UK or the US • UK or US companies located in the UK or the US • UK or US Governments (or government authorities, state governments etc.) located in the UK or the US <p>As long as the DSGL technology is not excluded.</p> <p>This is a potential reduction in workload because permits would no longer be required for supplies to the UK or US. However, the government could still require permits for exports of certain DSGL technology from Australia to the UK or US, if that DSGL technology is excluded.</p>
	<p>Creates two carve outs for:</p> <ol style="list-style-type: none"> 1. Supplier staff located outside Australia 2. Persons who hold a covered security clearance <p>The carve out for ADF, APS staff etc. already exists in current legislation. Only change is to constrain it by requiring the supply be made solely or primarily for a purpose prescribed by the regulations.</p>	<p><u>Supplier staff located outside Australia</u> Suppliers can supply DSGL technology to their employees or officers overseas, as long as the employee or officer is:</p> <ul style="list-style-type: none"> • An Australian citizen or permanent resident; and • Supply occurs in the course of their duties as an employee or officer. <p><u>Persons with covered security clearance</u> Suppliers can supply DSGL technology to <i>persons overseas</i> who hold a covered security clearance, as long as the supply is made solely or primarily for a purpose prescribed by regulations.</p>	<p><u>Supplier staff located outside Australia</u> BPL could supply DSGL technology to BPL Employee A, who is located in New Zealand. BPL Employee A would need to be an Australian citizen or permanent resident, and be receiving the DSGL technology in the course of their duties as a BPL employee.</p> <p><u>Persons with covered security clearance</u> BPL could supply DSGL technology to Person A located overseas, as long as Person A had an AGSVA clearance.</p>

Topic	Change Detail	Exceptions	Consequences
<p>Section 10A - Deemed Exports</p> <p><i>Supply of DSGL technology in Australia to a foreign person</i></p>	<p>Creates offence to supply DSGL technology to a foreign person in Australia. Offence is limited to supplies that are 'constitutional' and 'relevant'.</p> <hr/> <p>Creates two carve outs for:</p> <ol style="list-style-type: none"> Persons who hold a covered security clearance Supplier staff who are a citizen or permanent resident of a foreign country on the Foreign Country List (FCL) 	<p>N/A</p> <hr/> <p><u>Persons with covered security clearance</u> Suppliers can supply DSGL technology to <i>foreign persons in Australia</i> who hold a covered security clearance, as long as the supply is made solely or primarily for a purpose prescribed by regulations.</p> <p><u>Supplier staff who are TCNs with FCL citizenship or permanent residence</u> Suppliers can supply DSGL technology to their employees or officers in Australia who are third country nationals, as long as the employee or officer is:</p> <ul style="list-style-type: none"> A citizen or permanent resident of a country on the FCL; and Supply occurs in the course of their duties as an employee or officer. 	<p>BPL would not require permits for supply of DSGL technology to:</p> <ul style="list-style-type: none"> Australian persons in Australia UK or US citizens or permanent residents located in Australia UK or US companies in Australia UK or US Governments in Australia <p>As long as the DSGL technology is not excluded.</p> <hr/> <p>BPL would not require permits for supply of DSGL technology to:</p> <ul style="list-style-type: none"> Foreign persons in Australia who hold a covered security clearance BPL staff who are third country nationals, as long as they have FCL citizenship or permanent residence <p>This is a potential increase in workload because permits would be required for deemed exports to third country nationals located in Australia who are:</p> <ul style="list-style-type: none"> Not UK or US citizens or permanent residents; or Do not hold an AGSVA security clearance; or Do not hold FCL citizenship or permanent residence.
<p>Section 10B – Deemed re-exports</p> <p><i>Supply of DSGL goods or technology that were previously exported or supplied Australia, from a foreign country to another country</i></p>	<p>Creates offence for DSGL goods or DSGL technology previously exported or supplied from Australia, to be exported or supplied from a foreign country to another country. Offence is limited to exports that are 'constitutional' and 'relevant'.</p> <hr/> <p>Creates carve out for persons who hold a covered security clearance</p>	<p>N/A</p> <hr/> <p><u>Persons with covered security clearance</u> DSGL technology can be supplied to <i>foreign persons in another foreign country</i> who hold a covered security clearance, as long as the supply is made solely or primarily for a purpose prescribed by regulations.</p>	<p>BPL would not require permits for deemed re-exports to:</p> <ul style="list-style-type: none"> The UK or US, provided the recipients are Australian, UK or US Any foreign country, as long as the recipient has a covered security clearance <p>This is a potential increase in workload because permits would be required to authorise re-exports to any foreign country or person:</p> <ul style="list-style-type: none"> Not a UK or US citizen or permanent resident in the UK or US; Does not hold an AGSVA security clearance.

Topic	Change Detail	Exceptions	Consequences
<p>Section 10B – Deemed re-supplies</p> <p><i>Supply of DSGL goods or technology that were previously exported or supplied from Australia to a foreign country within the same foreign country</i></p>	<p>Creates offence in relation to DSGL goods or DSGL technology previously exported or supplied from Australia to a foreign country, within the same foreign country. Offence is limited to exports that are ‘constitutional’ and ‘relevant’.</p> <p>Creates carve out for persons who hold a covered security clearance.</p>	<p><u>Persons with covered security clearance</u> DSGL technology can be supplied to <i>another person in the same foreign country</i> who hold a covered security clearance, as long as the supply is made solely or primarily for a purpose prescribed by regulations.</p>	<p>BPL would not require permits for deemed re-supplies:</p> <ul style="list-style-type: none"> • Within the UK or US, provided the recipients are Australian, UK or US • Within the same foreign country (e.g. New Zealand), as long as the recipient has a covered security clearance <p>This is a potential increase in workload because permits would be required to authorise re-supplies within any foreign country:</p> <ul style="list-style-type: none"> • Not a UK or US citizen or permanent resident within the UK or US • Does not hold an AGSVA security clearance.
<p>Section 10C – DSGL Services</p> <p><i>Provision of DSGL services from in Australia to a foreign person</i></p>	<p>Creates offence to provide DSGL services to a foreign person</p> <p>Creates two carve outs for:</p> <ol style="list-style-type: none"> 1. Certain DSGL services provided in support of a supply of DSGL goods or DSGL technology 2. Persons who hold a covered security clearance 	<p>N/A</p> <p><u>Certain DSGL services</u> All below criteria must be met:</p> <ul style="list-style-type: none"> • DSGL services are provided in support of a supply of DSGL goods or DSGL technology • DSGL services solely consist of training or the performance of maintenance relating to the DSGL goods/technology • Maintenance covered by the training/performed is limited to inspection, testing, calibration or repair (including overhaul, reconditioning, and one-to-one replacement of any defective parts or components) • Maintenance covered by the training/performed does not include modification, enhancement, upgrade or any other form of alteration that 	<p>BPL would not require permits for provision of DSGL services to:</p> <ul style="list-style-type: none"> • Australian persons • UK or US citizens • UK or US companies • UK or US Governments <p><u>Certain DSGL services</u> BPL could provide DSGL services to any foreign person (regardless of location) as long as the DSGL services were connected with a supply and met the relevant constraints – limited to training or performance of maintenance etc.</p> <p><u>Persons with a covered security clearance</u> BPL could provide DSGL services to any foreign person (regardless of location) as long the foreign person has a covered security clearance. These DSGL services can be any DSGL services (no limitations).</p> <p>This is a potential increase in workload because permits would be required to authorise DSGL services to any foreign person:</p> <ul style="list-style-type: none"> • Not a UK or US citizen or permanent resident • Does not hold an AGSVA clearance <p>Unless DSGL services are constrained.</p>

Topic	Change Detail	Exceptions	Consequences
		<p>enhances the performance/capability of the DSGL goods/technology and only alters or improves the reliability or maintainability of the DSGL goods or technology</p> <p><u>Persons with covered security clearance</u> DSGL services can be supplied to foreign persons anywhere who hold a covered security clearance, as long as the provision is made solely or primarily for a purpose prescribed by regulations.</p>	<p>DSGL services that are:</p> <ul style="list-style-type: none"> • Not in support of a supply; or • Extend beyond training or maintenance; or • Modify or enhance the performance of DSGL technology <p>Would need to be separately authorised.</p>

Appendix B: DTC Act – Time Spent Analysis

	Current Activity	Time (minutes)	Future Activity	Time (minutes)
	Initial Step: Are the goods leaving the Australian Border, intangibly or tangibly?	No expertise required: 5	Initial Step: Is the technology controlled under the DSGL?	Expert: 20 Intermediate: 45 Beginner: 60
	Occurrence: 100		Occurrence: 1000++++ all activities and tech need to be assessed (unknown average)	
	Consideration: Are the goods classified under the DSGL? Process: Yes: Permit Required No: No permit required Unsure: Apply for in-principle/DSGL assessment	60-180	Consideration: Is this considered a deemed export? Process: 1. Identify, engage and ensure the receiver has no foreign person? 2. Is there an exemption? 3. Record use of exemption 4. If no exemption, application for permit. 5. Maintain and adhere permit requirements.	A time delay ranging from 60 to over 180++ minutes is anticipated, significantly impacting operational efficiency in terms of coordination and email response
			Consideration: Will this be re-transferred or re-exported in a foreign country? Process: 1. Is there an exemption? 2. If not, perform due diligence to ensure no re-transfer in foreign country, i.e. email and obtain End User Cert or Permit?	A time delay ranging from 60 to over 180 ++minutes is anticipated, significantly impacting operational efficiency in terms of coordination and email response
			Consideration: Is this a service? Process: 1. Obtain information about receiver of service. Will this be supplied to a foreign national? 2. Is there an exemption? 3. Record exemption if available 4. If no exemption, apply for permit 5. Maintain and adhere to permit conditions	A time delay ranging from 60 to over 180++ minutes is anticipated, significantly impacting operational efficiency in terms of coordination and email response
Time (min):		5-180		180 x 3 + 60 = 600
Occurrence:		100		1000+
Total estimated time:		Current Regime = 300 hours per year		Future Regime = 10,000 hours per year + set up of new framework to support

Appendix C: Compliance Steps Flowcharts



