



# ANSTO's Submission on the Defence Trade Controls Amendment Bill 2023

1 February 2024

## Introduction

1. The Australian Nuclear Science and Technology Organisation (**ANSTO**) appreciates the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee in response to the Defence Trade Controls Amendment Bill 2023 (**DTC Bill**).
2. ANSTO is the Australian Government's civilian nuclear centre of excellence. ANSTO has a mandated role to advise the Australian Government on all nuclear and science technology matters.
3. ANSTO is the custodian and operator of Australia's nuclear and landmark research infrastructure, including the OPAL multi-purpose research reactor, the Australian Centre for Neutron Scattering, the Centre for Accelerator Science and the Australian Synchrotron. In addition to the production of Australia's nuclear medicine, these facilities also enable research at ANSTO across the themes of Human Health, Advanced Manufacturing and support for the Resources sector, Nuclear Fuel Cycle, and the Environment.
4. As such, ANSTO has significant regulatory requirements with respect to the Defence Trade Control Act 2012 (**DTC Act**).
5. ANSTO supports the DTC Bill and understands its importance in Australia's national security environment. ANSTO also appreciates the benefits that the DTC Bill brings to the Government's implementation of the AUKUS partnership and the implementation of the Nuclear-Powered Submarine programme.
6. ANSTO's submission will focus on several aspects of the DTC Bill that would present the most significant operational challenges for ANSTO and makes suggestions for modifications to balance the administrative burden of its application.
7. ANSTO consents to this submission being published in connection with the Committee's inquiry.

## Submissions

### Third party access by persons inside Australia to ANSTO's infrastructure

1. ANSTO's Minister has issued a 'Statement of Expectations' around the desire to ensure ANSTO supports high utilisation of its major science infrastructure by encouraging access to both researchers and businesses (both Australian and non-Australian). ANSTO achieves this through merit and commercial access arrangements. ANSTO has 5,000 – 6,000 external user accesses (Australian and non-Australian) to its facilities every year, with around 4,000 of them being

affiliated with Australian universities or Australian companies.

2. The DTC Bill will require ANSTO to determine whether a person that has an existing affiliation with an Australian university or an Australian company is an 'Australian person' or a 'foreign person' when considering the supply of 'DSGL goods or DSGL technology' to them.
3. ANSTO observes the likelihood of a difficult and practical tension between the need for ANSTO to actually collect and hold personal identity verification documents for individuals (ie birth certificates, passports, visas etc) and conduct a thorough assessment of their research projects, as opposed to ANSTO seeking assurance in the form of contractual undertakings from the Australian university or Australian company with whom the person is associated.
4. ANSTO is conscious that the core 'supply' offences are 'absolute liability' offences and, as such, 'mistake of fact' is not an available defence. ANSTO submits that an exception to cater for reasonable assurance steps being taken at an organisational level will substantially alter the burden of implementation of the DTC Bill.

### Definition of 'Australian person'

5. An 'Australian person' is defined to include 'an authority of the Commonwealth'.
6. ANSTO requests that there be further clarity provided around what type of entity is considered to be an 'authority of the Commonwealth' and that a 'corporate commonwealth entity' be recognised in this definition of an 'Australian person' to ensure that ANSTO is clearly covered by the definition of 'Australian person'.

### Definition of 'Covered security clearance'

7. A 'covered security clearance' is 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'.
8. ANSTO requests clarity on the other security clearances 'authorised or approved by the Commonwealth'. In particular, whether the security clearances conducted by ANSTO as part of its secure access arrangements to its infrastructure are considered 'authorised or approved'.
9. In addition, ANSTO proposes controlled access to security clearance registers to determine who holds 'covered security clearances' as this would support the administrative process of knowing who is a 'foreign person' that may be permitted access.

### Access by ANSTO employees to ANSTO's infrastructure

10. In the Thom Review that was tabled in 2019 – a recommendation was made that the Government should consider including employees of ANSTO in the exemptions to the Offence.  
See Extract from page 57 at [www.defence.gov.au/about/reviews-inquiries/dtc-act-review](http://www.defence.gov.au/about/reviews-inquiries/dtc-act-review)

## Submission

The Australian Nuclear Science and Technology Organisation (ANSTO) advised that officers of ANSTO were not currently included in these classes of person.<sup>130</sup> It advised that 'ANSTO has a legislated authority to act as a means of liaison between Australia and other countries in matters related to its activities, which commonly involve the development and application of DSGL-listed technologies. ANSTO submitted that there was sufficient justification for including ANSTO officers in the list of officials to whom the offences under the DTC Act do not apply when acting in the course of their duties.

## Discussion

Currently, ANSTO officers would be required to obtain permits under the DTC Act, which would seem excessive regulation for an agency of ANSTO's nature. The Review also notes that ANSTO staff are subject to the same general rules that apply to other Commonwealth officers regarding the disclosure of information. The Review is persuaded by ANSTO's submission.

### Recommendation 9

The Government should consider amending the *Defence Trade Controls Act 2012* to include employees of the Australian Nuclear Science and Technology Organisation in the offence exemptions of sections 10(3) and 15, where the activities occur in the course of their duties.

11. ANSTO requests that subsection (a) in each of s10(3A)(a), 10A(6), 10B(7), 10C(6) of the DTC Bill and s15(2)(a) of the Act be expanded to include an 'employee of ANSTO'. As ANSTO is a corporate commonwealth entity, its employees are not classified as an 'APS employee'.