



**Parliamentary Joint Committee on Intelligence and
Security – review of the *Defence Amendment
(Safeguarding Australia's Military Secrets) Bill 2023*
Boeing Australia submission
November 2023**



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Overview

As highlighted in the *2020 Defence Update* and the 2023 independent *Defence Strategic Review*, Australia's security and geopolitical strategic outlook continues to be ever more uncertain, complex and dynamic. To ensure the Australian Defence Force (ADF) remains a world-leading, agile and integrated warfighting organisation, access to, development of, and sharing with trusted partners world-leading Australian technology is essential. It is in supporting the continued development of Australian-manufactured and supported equipment that Boeing Australia provides this submission to the Parliamentary Joint Committee on Intelligence and Security (the Committee) on the *Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023* (the Bill).

Boeing in Australia

Boeing is one of the world's largest global aerospace manufacturers. We develop, manufacture and service commercial aeroplanes, defence products and space systems for customers in more than 150 countries. Our diverse team is committed to innovating for the future, leading sustainability, and cultivating a culture based on our company's core values of safety, quality and integrity.

Our Australian portfolio represents a very broad range of Boeing's world leading and wide range of services and products. It includes advanced manufacturing of composite aircraft parts for commercial and defence aircraft; defence systems design, development and support; research and development; modelling and simulation; support and training; as well as uncrewed systems – Australia's own MQ-28 Ghost Bat the exemplar.

With a history dating back to 1927, Boeing is a significant contributor to Australia's economy with more than 4,800 employees at sites across the country, sustaining thousands of additional jobs through our supply chain and other activities. Boeing spends over AUD\$380 million per year with an established network of collaborations and suppliers across Australia, particularly small and medium sized Australian businesses. Across our portfolio in Australia, this has led to AUD\$225 million in Australian advanced manufacturing and services exports in 2021-22.

In Australia, Boeing has an extensive supply chain to support our programs and operations and continually looks to find ways to engage with and grow Australian industry content in aerospace. We're proud to partner with great organisations and universities that support veterans and the communities we live and work in. Our development programs, sustainment and training services span Boeing's aircraft and systems as well as non-Boeing platforms.

- Examples include the MQ-28 Ghost Bat, E-7A Wedgetail, P-8A Poseidon, F/A-18F Super Hornet, EA-18G Growler, the Currawong battlespace communications system, the *Wakulda* air battle management system, CH-47 Chinook, C-17 Globemaster and the Airbus EC-135 (the latter as part of the Helicopter Aircrew Training System). In all, we support fleet reliability, availability and capability for more than 50 percent of the ADF's aircraft types – but we not only support the ADF.

It is from Boeing Australia's broad range of products and services that we lead an integral role in the Indo-Pacific region's defence and industrial security. Though the majority of our teams support and lead work for the ADF, our portfolio of programs also includes collaborative work for nations such as the United States, the United Kingdom, and New Zealand, as well as other international strategic partners including the Republic of Korea and Singapore, among others.



Concerns with the proposed Bill

Appreciating the circumstances and requirements for the Bill as currently drafted, it is important to factor that it proposed to include all work that 'foreign work' restricted individuals perform – unless a specific individual authorisation or Ministerial legislative instrument exemption is put in place. While presumably the majority of countries we work with will be excluded by Ministerial instrument, we are concerned that this creates additional business and process overhead, leading to increased incidences of unintended consequences and the slowing of sustainment, research and development, as well as training opportunities. For example:

- There is a risk that we are provided with authorisation from the Defence Export Control organisation for certain proposed work to a certain country, but if that country is still not exempt from this Bill, then every individual involved (potentially hundreds of people) in our organisation's work scope would need to submit (and possibly re-submit) an application for authorisation under the Bill.
 - Considering the increasing threat environment and potential for conflict – this will clearly increase the overall administrative burden and slow support from industry, thus potentially impacting coalition operations who rely on this critical support. Especially if networks or systems are compromised preventing quick authorisations *in extremis*.
- The definition of 'work' and 'training' is particularly open as it relates to regional collaboration amongst the defence science community. There is a risk that as a result of Australia's close research ties with Quad and Five Eyes countries, that discussions may occur between Boeing personnel and Defence science organisations that fall within the scope of a 'government body of a foreign country' – requiring specific exemptions be put in place, adding to the administrative burden.
- Boeing encourages global mobility across our workforce, which provides valuable insights across the company as well as significant opportunities for our employees.
 - An example of a Boeing employee assignment that has the potential to be inadvertently subject to this Bill is of an Australian sales director who formerly served as a member of the ADF, assuming a regional sales role based in Singapore and consequently liaising with a wide range of South-East Asian countries as part of their Boeing duties.

Recommendations for consideration

To address some of the possible business risks – and thus potential unintended consequences from the Bill, Boeing recommends the following inclusions for the Committee's consideration:

- Consideration that **if an approved Australian export permit or licence is issued, then work associated with that product or licence is exempt from the legislation.**
 - An additional exclusion in section 115A that permits any work authorised by a Defence Export authorisation, or amplification to 115A (3) that a 'written agreement' includes such a Defence Export authorisation.



- To reduce the potentially massive administrative burden for companies that perform certain 'acceptable' roles, an exclusion process that permits the Minister (or their approved delegate) **to grant an authorisation to all employees of that business.**

Further afield, Boeing, through our interactions with the Governments of Australia, the United States and the United Kingdom, as well as through our participation in industry and peak bodies across all three nations, is closely following and providing input into various other national security reform activities – particularly the Defence Trade Controls Act.

- Some proposed individual private rulings could be viewed as denuding export controls that have been put in place, and thus negatively impact Australia's ability to meet the expectations of our partners.

As such, Boeing advocates a **common-sense approach be employed across all proposed reform activities** and we submit the following additional considerations for the Committee's attention:

- Given that US export control reform, specifically as it relates to the International Traffic in Arms Regulations (ITAR), is currently being reviewed by the US Congress, **Boeing strongly suggests that any proposed amendments or changes be put on hold until such time that implications of US reform are understood**, and associated sovereign Australian actions resulting from that reform are deliberated upon.
 - Any updates to the Act in advance of clarity around US reform activities will result in additional updates to Australian legislation, and will likely serve to add confusion into the export community of users.
- As substantial updates to Australia's export control frameworks would likely ensue, should the US adopt broad-based AUKUS exemptions, **Boeing suggests a 'whole-of-government' legislative review be undertaken to align, as required, existing guidance to ensure no inadvertent compliance gaps are created through a piece-meal approach.**
 - This is especially relevant to matters relating to the management of Dual and Third Country Nationals (DTCNs); the capture of 'prohibited nations'; Australia's adoption of extra-territoriality; the regulation of 'deemed exports', 're-exports' (including 'deemed re-exports') and 're-transfers'; and the 'provision of defence services.'
- Recommend clearer **articulation be provided on which countries are of concern be published** – for example, consideration on a clear articulation of 'Proscribed Nations' – similar to that which exists under ITAR 126.1.
 - Boeing appreciates the sensitivity in managing this from a foreign policy perspective, but a clear outline of which nations are/are not permissible to engage with would make it clear (specifically to SMEs and the university sector) where they may/may not pursue research collaboration and export activities – rather than seeking approval after the fact and inadvertently risking prosecution and publishment thus reducing potential opportunities for innovation.
- Recommend **capturing new and emerging technologies** through the provision of specific export guidance. For example, autonomous, artificial intelligence, cloud computing, among others, be included for explicit guidance and expectations on niche export regimes such as the Missile Technology Control Regime (MTCR).



- Currently guidance on areas such as the MTCR are being developed across multiple Commonwealth of Australia (CoA) stakeholders on an *ad hoc* policy basis, as the needs of exporters presents, inviting potential inconsistencies leading to probable compliance gaps and delays in realising potential export opportunities for Australia.
 - : CoA (and industry) would benefit from the establishment of commonality in MTCR interpretation (and application through defined regulation) with like-minded allies (particularly the United States) on MTCR requirements (i.e., what constitutes 'mutual assurances').
 - : The establishment of codified legislative guidance, versus policy interpretation, would benefit Australian exporters as MTCR-related technologies, intended for export markets, continues to be developed.
- The Act should be drafted in such a way as to anticipate technology advancements/development with regard to export policy and, although the legislation should be Australian in nature, best practice and extant policy from allied and like-minded nations could be leveraged to help ensure the Act and Defence Strategic Goods List (DSGL) don't lag behind technological advances.
- **Fewer areas which default to 'Ministerial discretion' and 'catch-all legislation',** and a more thorough breakdown of the terms and conditions applied to potential exports/exporters.