



Australian Government

**Senate Standing Committee on Foreign Affairs,
Defence and Trade**

Legislation Committee

**Progress Report No.1 into the *Implementation of
the Defence Trade Controls Act 2012***

Government Response

December 2013

Recommendation 1

The committee recommends that DECO examine the timeliness of processing applications and provide a report to the committee prior to the committee's next six-monthly report. The committee is particularly interested in instances in which there have been delays in processing applications, and what mechanisms are in place to ensure the implementation of the Act does not cause problems in processing applications.

Government Response

Agree

Australia takes seriously its international counter proliferation obligations, using Australian export control laws to ensure Australia exports responsibly. The Defence Export Control Office (DECO) conducts a robust case-by-case assessment process on all applications to export:

- goods controlled for export under Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*;
- non-regulated goods or services that may be prohibited for export under the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*; and
- non-regulated goods that may contribute to a military end-use that would prejudice the security, defence or international relations of Australia, which may be prohibited under section 112BA(1) of the *Customs Act 1901*.

Every effort is made to assess applications within the Government's time frames, and the progress of individual cases is closely monitored.

- For goods controlled under Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958* DECO aims to finalise cases within 15 working days for routine applications, and within 35 working days for applications requiring interagency referral. In 2012, DECO assessed 2960 export applications. Of these 76% were completed within 15- 20 working days, 15% were completed within 20-25 working days, 5 % were completed within 30-35 working days, and 4% were completed over 35 working days.
- For goods or services which may be prohibited for export under the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* and non-regulated goods that may contribute to a 'military end-use', DECO aims to finalise assessments within 15 working days for routine applications and 35 working days for those requiring interagency referral. In 2012, DECO conducted 253 assessments of non-regulated goods. Of these 86% were completed within 15 working days, 10% were completed within 35 working days, and 4% were completed over 35 working days.

DECO provides a fortnightly report to the Minister for Defence and Defence senior management, showing the status of all applications referred for interagency consideration. These are complex and sensitive cases that are pending advice from several agencies, and/or additional information from the applicant. The complexity of these cases is generally due to the sensitivity of the items, the end-user and/or the end-use destination.

Applicants are consulted early and throughout the process and are provided the opportunity to present all relevant information. Where it is determined that an application requires inter-agency consultation, applicants are provided written advice explaining the process and that time frames may extend beyond 35 days. Applicants are provided with regular updates throughout the process.

Regarding the Committee's question about mechanisms that are in place to ensure the implementation of the Act does not cause problems in processing applications, the reporting and monitoring referred to above is key to ensuring timeliness, as is the applicants' constructive and responsive participation. Ministerial and senior official oversight of processing times and sensitive cases provides visibility and the ability to intervene if performance reduces. Defence will continue to ensure that appropriate resources are allocated to deliver both existing regulatory responsibilities and to implement the new strengthened export controls under the *Defence Trade Controls Act 2012*.

Defence is working closely with the Strengthened Export Controls Steering Group to ensure that strengthened export controls are implemented in a way that minimises burden for regulated parties, and that is manageable and sustainable from a regulatory perspective. In May 2013 DECO introduced an online application processing system that will support the requirements of both the existing and new regulation.

Defence acknowledges the Committee's comments about the importance of open and effective communication at paragraphs 2.13-2.18, 2.24 and 3.2, and in Senator Ludlum's additional comments. Steering Group members, the Defence Export Control Office, and representatives from the Department of Innovation are communicating with stakeholder groups, including sectoral peak bodies. The assertion at paragraph 2.16 that Steering Group members have been required by Defence to sign confidentiality undertakings is not correct. The Steering Group has itself agreed without any requirement being proposed by Defence that official comment should be limited to the Minister for Defence and the Chair of the Steering Group, and also agreed that other Steering Group members are able to (and do) communicate with their stakeholder constituencies. Information about the Steering Group's progress is regularly added to its website following every meeting. At its 20 June 2013 meeting, the Steering Group considered a stakeholder engagement plan, which outlines regular communication activities over the two year transition period. This plan is publicly available at <https://exportcontrols.govspace.gov.au/communication>. Defence will work with stakeholders to progressively refine and implement this plan.

Detailed information on the implementation of strengthened export controls to date is contained in the Steering Group's first report on progress to the Minister for Defence and Minister for Research, which was provided to the Committee on 19 August 2013, and is publicly available at <https://exportcontrols.govspace.gov.au/steering-group/secsg-reports>.

Defence would welcome the opportunity to brief the Committee on the progress of strengthened export control implementation to date, and next steps. Defence will also work with the Committee secretariat to ensure that the timing of future six monthly reports are aligned, so that in future the Committee can consider the Strengthened Export Controls Steering Group's six-monthly report before releasing its own report.