Defence Controls Act &
Autonomous Sanctions

Academic Senate
May 2013

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Agenda

- What is the Defence Controls Act (DCA)
- What does the DCA do?
- How does it affect me?
- Offence Provisions
- The Defence and Strategic Goods List (DSGL)

- Autonomous Sanctions
What is the DCA?

- The Defence Trade Controls Act 2012 has two primary functions:
  - it strengthens Australia’s existing export controls, and
  - it implements the Australia-US Defence Trade Cooperation Treaty.

- The provisions that strengthen Australia’s export controls are related to Australia’s domestic export control regime. These measures are not yet in force, as they are being introduced through a phased two-year implementation period.

- The two-year transition period will commence once the Australia – United States Defence Trade Treaty comes into effect in 2013.
What does the DCA do?

- Australia’s export control system aims to control goods and technology that can be used in chemical, biological and nuclear weapons, or military goods and technology.

- Australia works to identify and regulate sensitive military and dual-use technologies - Defence and Strategic Goods List (DSGL).

- The purpose is not to impede trade, innovation, research or international collaboration, but rather to facilitate scrutiny.

- The Defence Trade Controls Act 2012 (the Act) regulates:
  - the intangible supply of controlled technologies on the DSGL, such as supply by electronic means; and
  - brokering the supply of DSGL goods and technology.
What does the DCA do? (ctd)

- The export of DSGL goods and technologies in tangible form is controlled under the Customs (Prohibited Exports) Regulations 1958.
- The Defence Trade Controls Act 2012 controls the intangible supply of these same technologies.
- Examples of intangible supply include transferring DSGL technology
  - by email
  - Facsimile
  - the internet, or
  - providing remote access via a server.
How does the DCA affect me?

- After the two-year transition period individuals or organisations undertaking the intangible supply of DSGL technology will need to **seek permission** to supply the controlled technology to an entity outside of Australia.

- **Individuals** or organisations can **self-assess** whether their goods or technology are listed in the Defence and Strategic Goods List (DSGL).

- Industry, **university and research institutions** are well-placed to identify the technical capabilities of their research, goods and technology and whether these are to be exported or supplied overseas from Australia.

- **NOTE:** This includes publication of research carried out in Australia.

- If unsure, **individuals** or organisations are encouraged to contact the Defence Export Control Office (DECO) to seek guidance.
Offence Provisions

- When the Act’s offence provisions come into force, after the two-year transition period, there will be an offence for the intangible supply of DSGL technology from Australia to a person outside Australia without a permit.

- The maximum penalty for these offences is: 10 years imprisonment, or 2,500 penalty units, or both.
PART 1 covers defence and related goods — those goods and technologies designed or adapted for use by armed forces or goods that are inherently lethal.

These goods include:

- Military Goods — those goods or technology that is designed or adapted for military purposes including parts and accessories thereof.
- Non Military Lethal Goods (NMLG) — that equipment that is inherently lethal, incapacitating or destructive.
PART 2 covers those goods that have a dual use.

- Dual-use goods comprise equipment and technologies developed to meet commercial needs but which **MAY** be used either as military components or for the development or production of military systems or weapons of mass destruction.

- This part is further subdivided into the following 10 categories:
  - Category 0 — Nuclear Materials;
  - Category 1 — Materials, Chemicals, Microorganisms and Toxins;
  - Category 2 — Materials Processing;
  - Category 3 — Electronics;
  - Category 4 — Computers;
  - Category 5 — Telecommunications and Information Security;
  - Category 6 — Sensors and Lasers;
  - Category 7 — Navigation and Avionics;
  - Category 8 — Marine;
  - Category 9 — Aerospace and Propulsion.
Sanctioned supply

For these Regulations, a person makes a sanctioned supply if:

1. the person supplies, sells or transfers goods to another person; and
2. the goods are export sanctioned goods in relation to a country; and
3. as a direct or indirect result of the supply, sale or transfer the goods are transferred:
   1. to that country; or
   2. for use in that country; or
   3. for the benefit of that country.

Countries covered (currently)

**Burma, Fiji, Iran, Syria & Zimbabwe**
Sanctioned service:

- For these Regulations, a sanctioned service, for a country mentioned in an item of the table, is the provision to a person of:
  
  (a) **technical advice, assistance or training**; or
  
  (b) financial assistance; or
  
  (c) a financial service; or
  
  (d) another service;

- if it assists with, or is provided in relation to the following activities:

  (a) A military activity
  
  (b) An activity involving the supply, sale, transfer, manufacture, maintenance or use of an export sanctioned good.
  
  (c) This could include equipment or technology related to the oil and gas industries.

- Countries covered (currently)

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  Burma, Fiji, Iran, Syria & Zimbabwe
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Autonomous Sanctions - 3

Designated Persons

- Minister may, by legislative instrument, do either or both of the following:
  - designate a person or entity as a designated person or entity
  - declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia.

- Countries Covered:
  - Burma, North Korea
  - former Federal Republic of Yugoslavia, Fiji, Iran, Libya, Syria & Zimbabwe

- See autonomous sanctions link for details.
What should we do?

The identified areas of risk that require review include:

1. Recruitment of international students in UG & PG programs who are receiving instruction, either:
   1. in a program of study that can reasonably be considered to be technical advice, assistance or training of a sanctioned service, for Iran and Syria this includes oil, petroleum or petrochemical products; or
   2. less directly through an undergraduate degree which includes study in areas that may be considered as technical advice, assistance or training in a sanctioned goods related to WMD, e.g. physics, chemistry.

2. Acceptance of HDR students into areas of study that can be seen to be technical advice, assistance or training in a sanctioned good as detailed in 1 above.

From 21 August 2012, the university is PROHIBITED from entering into NEW contracts to provide educational services to students meeting the above description.

The sanctions DO apply to distance education, offshore campuses and joint-degree courses offered with foreign universities.
Important Links
