

## ISSUE OF NOTICES BY THE MINISTER

The Minister for Defence is also given discretion under the Act to notify a person that dealing in goods or services may result in assistance to a WMD program. The notice may prohibit the person from supplying the goods or services, or permit their supply only on compliance with conditions contained in the notice.

## WHAT IS THE RESULT OF FAILURE TO COMPLY?

Criminal penalties can be imposed for breaching the prohibitions on supply of goods and services that may contribute to a WMD program. The Crimes Act 1914 allows a court to impose an appropriate fine and/or a term of imprisonment for 8 years. If a body corporate is convicted of the offence, the Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

In addition, any attempt to export goods can result in the seizure and forfeiture of those goods. Injunctions may also be obtained against someone who is engaging in, or proposing to engage in, conduct that is an offence against the WMD Act.

## Contact us

For enquiries:

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Our website: [www.defence.gov.au/dmo](http://www.defence.gov.au/dmo)

If you would like further information regarding the WMD Act, WMD Regulations or export controls in general, please contact:

Director  
Defence Trade Control and Compliance Section  
International Materiel Branch  
Industry Division  
Department of Defence  
Campbell Park Offices 3-7-05  
CANBERRA ACT 2600

**DMO**  
Defence Materiel Organisation



# WEAPONS OF MASS DESTRUCTION (PREVENTION OF PROLIFERATION) ACT 1995

AN INFORMATION GUIDE FOR  
INDUSTRY AND  
THE GENERAL PUBLIC

APRIL 2002

“ENSURING AUSTRALIA EXPORTS RESPONSIBLY”

## ***THE WEAPONS OF MASS DESTRUCTION ACT (WMD ACT)***

Australia has achieved an international reputation for promoting disarmament and the non-proliferation of weapons of mass destruction. Australia's system of export controls, covering defence and dual-use goods and technologies, were designed to ensure that such exports are consistent with broader Australian and foreign strategic and security policy objectives.

Export controls on such goods and technologies controlled under the Customs (Prohibited Exports) Regulations are contained in the Defence and Strategic Goods List (DSGL). The DSGL covers equipment, assemblies and components, associated test, inspection and production equipment, materials, software and technologies. It is divided into 3 Parts incorporating goods and technologies from lists originating from the Wassenaar Arrangement (WA), Missile Technology Control Regime (MTCR), Nuclear Supplier's Group (NSG), Australia Group (AG) and the Chemical Weapons Convention (CWC).

In 1992, the Government became aware that goods and technologies not prescribed in the control lists, and the provision of services, which could contribute to the development of WMD projects, were not covered by the existing export regulations. To deal with this gap in the controls, the Australian Government introduced the Weapons of Mass Destruction (Prevention of Proliferation) Act in 1995. This Act and the WMD Regulations enabled the Government to control goods and services that will or may assist in the development of such weapons and programs.

## ***WHAT IS A WEAPONS OF MASS DESTRUCTION PROGRAM?***

The Act defines a "Weapons of Mass Destruction program" or "WMD program" to mean a plan or program for the development, production, acquisition or stockpiling of nuclear, biological or chemical weapons or missiles capable of delivering such weapons. Without limiting the generality of the operation of the Act, the Act has specific provisions covering the Biological Weapons Convention, the Chemical Weapons Convention, and the (nuclear) Non-Proliferation Treaty. The final decision as to whether an export, or other dealings in goods, or the provision of services would assist a WMD program rests with the Minister for Defence.

## ***WHO IS AFFECTED BY THE WMD ACT?***

Australian citizens, persons normally resident in Australia, and bodies incorporated in Australia or an external Territory whether doing business in Australia or overseas, as well as foreigners doing business in Australia. Corporate bodies are deemed to have the state of mind of their directors, servants or agents if those directors, servants or agents are acting within the scope of their actual or apparent authority.

The WMD Act places specific obligations on companies, citizens or residents involved in the trade of goods and/or provision of services to ensure that these are not destined for use in an unauthorised WMD program

## ***WHAT DOES THE WMD ACT AFFECT?***

The supply of goods or services both within and outside Australia, the export of goods and technologies which are not controlled under other legislation, the provision of services in Australia, and the provision of services external to Australia, where it is suspected that these goods or services will or may assist a WMD program.

If you know or suspect, or have been informed by the Government, that what you are doing is in support of a WMD program then you must apply for a permit. If you are unsure about whether your activities are related to a WMD program you should seek advice from the Minister for Defence, through the Defence Trade Control and Compliance Section of the Department of Defence, before proceeding with sales or contract negotiations. Any information provided will be treated as commercial-in-confidence and only released to other government agencies on a need-to-know basis.

The following examples are fictitious but are indicative of the kind of possible procurement scenarios which could occur.

**Example 1.**

A foreign student from a country known to have an active biological weapons procurement program undertook a Ph.D. at an Australian institute. The student's area of research was in its own right not obviously related to biological weapons, indeed it related to the protection of crops from agricultural pests. The research involved gaining expertise in techniques used for isolating biological toxins and the use of DNA cloning technology for the reproduction. Although such skills were entirely valid for the stated aim of the research, as well as a wide variety of commercial and medical purposes, they were also dual-use in that they could be used in the production of biological warfare agents.

The institute became concerned when it learned that the student was contemplating taking samples of biological material with her when she returned to her home country on the completion of her studies. After being provided with further details of the materiel involved, it was determined that the material would directly assist a WMD program conducted by the country from which the student originated. As a result the institute was advised that export of the samples would not be permitted. From that point the institute closely monitored the provision of its educational services to the student to ensure no further insights of direct relevance to a WMD program would be gained.

**Example 2.**

A delegation from a foreign trading company visited Australia to purchase sophisticated computer equipment. In their dealings with Australian suppliers the delegation members indicated their desire to purchase computer equipment on behalf of their nation's petroleum conglomerate but refused to give clear details as to the equipment's end use. The type of equipment they showed an interest in was at the high end of technical capabilities and of the type known to be very useful for advanced computer simulation and modeling, including the kind required for nuclear, chemical and biological research.

Inquiries by relevant Australian authorities established that, rather than being associated with a petroleum conglomerate, the delegation members were in fact from an arm of the country's military industrial complex suspected of involvement in WMD programs. The Australian suppliers were advised that an application for export for the goods would need to be made, though some of the goods could be supplied to the delegation without permits as these goods did not have a WMD application.

Providers of goods and services as well as exporters should exercise prudence in any transaction. The onus is placed on you to make reasonable enquiries in relation to how your products, information and know-how will be used and by whom.

## ***THE ISSUE OF PERMITS***

The Act provides for the Minister in appropriate cases to issue permits for dealing in goods or services, where it has been assessed that goods or services could assist a WMD program. Such permits may be unconditional or subject to conditions. Applicants for permits are required to make a full disclosure of the reasons giving rise to their requirement for such a permit. There is no special form required for a permit, the Regulations require that a request be made in writing giving details of:

- The applicants name and address;
- A description of the goods or services to be supplied or exported;
- The name and address of the recipient of the good or services; and
- The reasons why the person believes that the supply of the goods or services would not be contrary to Australia's international or treaty obligations or the national interest.

Although the Regulations are not specific, such requests should be addressed to Defence Trade Control and Compliance Section.