

Episode Summary

Episode number: 95
Episode name: Primed for Export: The Risks of Inadvertent Breaches of the International Traffic in Arms Regulations
Guest(s): Travis Shueard

What area(s) of law does this episode consider? International Traffic in Arms Regulations (ITAR) and their impact on Australia's defence industry.

Why is this topic relevant? The International Traffic in Arms Regulations are a set of United States' regulations that control the export of *defense articles*, *defense services*, and technical data from the US. They are an artifact of the Cold War designed to control where US defense tech ends up and they have extensive extraterritorial reach. The ITAR are a major concern for the future of the AUKUS agreement and the proposed transfer of nuclear submarine technology to Australia.

What legislation is considered in this episode? *International Traffic in Arms Regulation (ITAR)*

What are the main points?

- ITAR is a regulatory regime implemented by the United States that controls the export of *defense articles*, *defense services*, and technical data.
- The *US Munitions List* outlines the categories of restricted items, including firearms, ballistic missile technology, and nuclear weapons.
- Australian companies collaborating with US defense organisations are likely to encounter ITAR. This will only increase with AUKUS projects. Australian companies submit to the jurisdiction of the United States when dealing with ITAR.
- AUKUS is a trilateral security alliance between Australia, the United Kingdom, and the United States, aimed at boosting defense capabilities, technological integration, and expanding defense industrial capacity.
- It was formed in response to changing geopolitical dynamics in the Indo-Pacific region and the US's desire to pivot towards the Pacific.
- The term "export" under the ITAR is more complex than simply sending physical objects overseas. It can also include conversations between individuals from different countries regarding restricted items.
- Many Australian defense contractors lack awareness of ITAR's implications when dealing with US organisations. This lack of education may be an issue once some of the more complex AUKUS projects commence.

- Although ITAR is complex, it can be understood through education and training provided by the government or industry bodies. While lawyers should be involved in relevant projects, the government should also take responsibility for offering training opportunities to ensure compliance.
- Under ITAR, a “foreign person” is broadly defined as someone who is not a lawful permanent resident of the United States. Any release of ITAR controlled material to a foreign person is considered an export to all countries where the person holds citizenship or permanent residency. This raises potential conflicts with equal opportunity and anti-discrimination employment laws. Exemptions can be sought under these laws or ITAR to address such situations.
- ITAR breaches can occur through accidental disclosure, intentional violations, or omitting required information.
- Unintentional breaches of ITAR are the most frequent. This problem can arise where someone simply sends off an email to a foreign person that contains information covered under ITAR without authorisation.
- Self-reporting breaches within 60 days is required and can be considered a mitigating factor, whereas failure to disclose can lead to adverse consequences.
- Penalties for civil violations can be up to \$1 million per violation, while criminal violations can result in up to 20 years of imprisonment. Further consequences include blacklisting and mandatory export process reform.
- Understanding ITAR regulations is crucial for Australian companies working with US defense contractors.
- While larger companies have dedicated export control managers, smaller companies may lack the legal expertise and resources to navigate this complex regime. Lawyers can provide value by guiding companies and avoiding accidental or intentional breaches of ITAR, which can result in serious consequences.
- Having proper processes in place to monitor and address accidental breaches of the ITAR is essential for businesses. Businesses should voluntarily disclose wrongdoing, promptly act on it, and be cooperative.
- For insights into the defense industry, personal research and engagement with defense industry member organisations like the Defence Teaming Centre are recommended.
- Learning from experienced individuals and venturing outside one's comfort zone through networking and events is crucial for professional growth in the legal field.

What are the practical takeaways?

Show notes

[Tim O’Callaghan, Travis Shueard, Laura Coppola, AUKUS, ITAR, Export Control Reform and the Australian Defence Industry \(2023\)](#)