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Department of Defence
 Office of the Secretary for Defence
 Private Bag X 910
 0001 Pretoria

19 August 2007

Honourable Chairperson of the Portfolio Committee on Defence
 90 Plein Street
 Parliament of South Africa
 Cape Town

Dear Sir,

DOD POSITION AND SUGGESTIONS ON THE NATIONAL CONVENTIONAL ARMS CONTROL BILL

1. The DOD has pleasure in submitting the undermentioned aspects as a Departmental position in response to presentations made to the hearings of the Portfolio Committee on Defence during early August 2008.
2. The aspects are addressed in the sequence of submissions made by the public to the version of the Bill as it stands as B45-2008.

ARMSCOR

3. The key aspects raised by Armscor relate to *possession* and *end user certificates*.
4. Amendment of section 1.
 - a. Definitions.
 - i. 2.1: "*brokering services*". The term *provider* is used to reflect that business related to the rendering of a service while *supplier* is considered to be more closely related to the business of trade. The DOD stands by its position.
 - ii. 2.2: "*competent authority*" refers to those functional entities that have been delegated relevant powers to make them competent thus excluding the Minister who delegates such powers in terms of section 11. The DOD stands by its position.
 - iii. 2.3: "*brokering*" is seen as a service and not trade, hence excluded from the definition of *trade*. The DOD stands by its position.
 - iv. 2.4: "*possession*" The DOD notes the concerns raised and proposes exclusions be provided for in the provisions of section 13(2).

- v. 2.5: "*destroyed / destruction*" is considered to be a service and therefore can not be included in the definition of *trade* separately, as services are already included therein.
 - vi. 2.6: The term "*services*" is clearly explained in the main text of section 27(3)(d) and need not be repeated in the definitions. See *controlled item*.
 - vii. 2.7: "*transfer*" refers to *domestic transfer* and, for the purposes of the Act, means the transfer of title of ownership of controlled items from one person to another within the Republic. If it would enhance readability then the DOD would support clarification of the word.
 - viii. 2.8: Possession for marketing and export support. The DOD is of the opinion that an authorised owner or his agent who places its controlled items in the hands of an exhibitor does not constitute effecting a transfer and such authorised owner or agent remains ultimately responsible for what happens to such controlled items, where it goes or for whatever purpose it is used for. See the definition for *possession*.
- b. Amendment of Section 3
- i. 2.8 bis: Meaning of "certain assistance or services". See the Mercenary Act.
- c. Amendment of Section 4
- i. 2.9: The DOD agrees, in section 4(1)(a) insert "*and possession of*".
 - ii. 2.10: The DOD agrees, in section 4(1)(F) insert "*or in possession of*".
 - iii. 2.11: The DOD agrees, in sections 4(2) (a) (c) and (d) replace "*trade in with trade in and possession of*".
 - iv. 2.12: The DOD advises no change in the text for the purpose of clarity related to police and military activities that are not related to trade.
- d. Insertion of section 7A
- i. 2.13.1: The DOD accepts the inclusion of the Department of Science and Technology in the composition of the Scrutiny Committee but not the Department of Minerals and Energy Affairs.
 - ii. 2.13.2: The DOD disagrees and stands by its position not to interfere with the naming of the respective agencies and their departmental affiliations.
- e. Amendment of section 9

- i. 2.14: The DOD agrees, replace "trade in" with "trade in and possession of".

- f. Substitution of section 13

- i. 2.15: Dual-use items will be attended to in the Regulations.
- ii. 2.16: The DOD concurs and in section 13(1) suggests deleting text as follows: "...section 27(3)(a) and (b) or render services referred to in section 27(3)(d),] unless..."
- iii. 2.17: The DOD concurs with the correct reference to the Explosives Act.
- iv. 2.18: The DOD concurs with the inclusion of the word "of" in "under section 13(2) of that Act".
- v. 2.19: In terms of 13(2)(e) nuclear materials will not be controlled in terms of the NCAC Act.

- g. Amendment of section 14

- i. 2.20: The DOD suggests no change for the purposes of clarity.
- ii. 2.21: The DOD suggests no change for the purposes of clarity.

- h. Amendment of section 17

- i. 2.22: The DOD suggests no pro-forma for end user certificates need be drafted provided the principles remain intact.
- ii. 2.23: The DOD suggests no changes be made.
- iii. 2.24: The DOD suggests no changes be made.

- i. Amendment of section 22

- i. 2.24bis: The DOD agrees with the suggestion to include "or possess controlled items".

- j. Amendment of section 24

- i. 2.25: The DOD agrees but the executor for disposal should be left to legal processes. The DOD recommends deleting all text after "...must be disposed of." in section 24 (3).

DENEL DYNAMICS

- 5. The issue raised in section 16(b)(i) is adequately covered in the opinion of the DOD.

INSTITUTE FOR SECURITY STUDIES

6. Section 23. Reporting to Parliament.
 - a. The DOD agrees to the suggestion of deleting "annually".
 - b. The DOD is of the opinion that "published" is sufficient and reference to web sites is superfluous.
 - c. The DOD is open to suggestions to reveal more detailed type-related information in reporting.
 - d. The DOD would not be in a position to report on balance of exports still outstanding as this would complicate administrative processes to expedite.
7. End User Certificates. The suggestion to delete this amendment is not acceptable to the DOD as this amendment has come about through extensive practical experience.
8. Staffing of DCAC. This matter is not for legislative action and is in hand through administrative processes.
9. Controlled Items List. The DOD agrees that updated lists be published annually in the Regulations. The DOD does not wish to allow itself to be unduly influenced by the industry and other civil entities in determining the items to be controlled on the lists.

SA CATHOLIC BISHOPS CONFERENCE

10. The 90-day reporting or publishing deadline. The DOD does not wish to be bound to a specific reporting or publishing deadline but will provide the necessary information as soon as is practicable.
11. Objects of the Committee. The positive comments are noted with satisfaction.
12. The Scrutiny Committee. The efforts of the Auditor-General and the Defence Industry were the main drivers in the establishment of the Scrutiny Committee. The DOD is in a position to consider aspects related to the Scrutiny Committee and other sub-committees to be reflected in the Regulations in lieu of in the Act if so desired.
13. Possession of Controlled Items. This comment is noted with satisfaction.
14. Reports by the Committee. The DOD notes the concerns raised and is open to revealing more information in reporting as stated before.
15. Exemptions. These provisions were incorporated into the amendments at the request of the SANDF and other security agencies. The lives of operatives and the successful outcomes of planned operations often depend on high levels of secrecy, security and rapid response times.

DENEL

16. The DOD notes Denel's comments with satisfaction.

THE CEASFIRE CAMPAIGN

17. Section 3c. The DOD suggests the current amended Section wording of Section 4(4) be retained.

18. Section 5. As stated elsewhere, the efforts of the Auditor-General and the Defence Industry were the main drivers in the establishment of the Scrutiny Committee. The DOD is in a position to consider aspects related to the Scrutiny Committee and other sub-committees to be reflected in the Regulations in lieu of in the Act if so desired.

19. Section 7. No changes are suggested.

20. Section 8. The DOD agrees with the suggestion to amend section 11(1) by the insertion of "Subject to the conditions of section 15:".

21. Section 9. The deletion of the term "*financial*" is concurred with to widen the control of the Auditor General. The term "*affairs*" was originally intended and not "*financial affairs*".

22. Section 10. This statement is not clearly understood by the DOD.

23. Section 11. This statement is not clearly understood by the DOD. The DOD stands by its position.

24. Section 14. This statement is noted but the DOD stands by its position which is based on practical experience.

25. Section 17. As stated elsewhere the DOD is open to revealing more type-related information in reporting.

26. Section 20. As stated elsewhere, these provisions were incorporated into the amendments at the request of the SANDF and other security agencies. The lives of operatives and the successful outcomes of planned operations often depend on high levels of secrecy, security and rapid response times.

27. Foreign Military Assistance. Regulations related to the current Mercenary Act are under compilation. The provisions for fines for contraventions under the foreign military assistance legislation have a different grounding to circumstances surrounding the determination of fines under the NCAC Act

SA DEFENCE RELATED INDUSTRY

28. Multiple Exports/Imports. The issue of multiple exports and imports will be attended to in the Regulations.

29. Clause 7 on section 9: Competent Employee vs Official. The DOD recommends

text on

staying with the term *employee* in order to be consistent with the terms of the Public Service Act. The DOD suggests clarifying ~~text~~ to the effect that in the exercise of the function of the inspectorate, it may call upon any designated police official to assist in the execution of that function.

30. Clause 9 on section 12. This is concurred with and the DOD suggests deleting "financial" as stated elsewhere.

31. Clause 11 section 14 - value. The DOD suggests no change as the term value is clearly in a financial context.

32. Clause 11 section 14 - destroyed domestically? The importation into South Africa of controlled items for destruction is affirmative.

33. Clause 12 section 15 - re-export. A re-export is treated in the same way as an export, no changes are deemed necessary.

34. Clause 16 section 22 - confidentiality. This is addressed in clause 17.

35. Clause 17 section 23 - annual reports. Changes of ownership, re-export and destruction are entities that are not feasible to extract and report on and are not deemed applicable according to the DOD.

36. Clause 19 section 24A- fines and defence-related turnover. The DOD agrees with this suggestion that fines be related to defence-related enterprise.

37. Clause 20 section 25A - capital equipment. The DOD notes the suggestion but indicates that provision for emergencies is not related to procurement but rather the execution of operations abroad.

38. Regularity of Committee Meetings. The DOD is of the opinion that this is a procedural matter.

39. Structural Relationships. The DOD is of the opinion that this is a procedural matter.

40. Other - Minister vs Chairperson. The context of the wording in the respective text entries will indicate whether the Minister or the Chairperson is applicable.

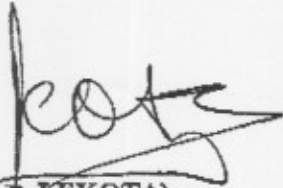
41. I trust that this feedback will facilitate your deliberations on the matter.


(J.B. MASILELA)

SECRETARY FOR DEFENCE: DIRECTOR-GENERAL

**DOD POSITION AND SUGGESTIONS ON THE NATIONAL CONVENTIONAL
ARMS CONTROL BILL**

42. I concur with the recommendations made by the Department.



**(M.G.P. LEKOTA)
MINISTER OF DEFENCE**