

Article Information

Authors: Tim O'Callaghan, Travis Shueard, Cain Kemp, Dr Colette Langos

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Sector: Defence

Key Takeaways: Defence & Space Masterclass | Navigating the Defence Procurement Frontier - Strategies for Success

The webinar discussed the implications and guidelines of termination for convenience clauses and the ASDEFCON IP framework for the defence and space industry, and advised companies to be proactive, innovative and legally informed in this sector.

Executive Summary

The webinar, hosted by Piper Alderman, focused on two key topics relevant to the defence and space industry: termination for convenience clauses and the ASDEFCON IP framework. Dr. Colette Langos from the Adelaide Law School discussed the implications of termination for convenience clauses, which allow the government to end an agreement without cause, emphasising the need for careful negotiation of these clauses. Travis Shueard of Piper Alderman addressed recent changes in the Australian defence contract IP framework, highlighting the importance of understanding intellectual property rights and regulations in the defence industry. The webinar also included a panel discussion on the practical applications of these topics for the Australian defence industry. The speakers highlighted the need for companies to be proactive in protecting their IP assets, negotiate contract terms effectively, and seek legal advice to navigate these complex issues.

Speakers

- [Dr Colette Langos](#), Senior Lecturer, Adelaide Law School/RUMLAE, The University of Adelaide
- [Cain Kemp](#), Senior Manager, Legal and Commercial, Babcock
- [Travis Shueard](#), Senior Associate, Piper Alderman
- [Tim O'Callaghan](#), Deputy Managing Partner, Piper Alderman

Key Takeaways

1. **Defence Contract Essentials:** The webinar covered two main topics: termination for convenience clauses and the Australian defence contract IP framework, both being crucial aspects of defence and space industry contracts.
2. **Termination Convenience Clauses:** Termination for convenience clauses, allow the government to terminate an agreement without cause and are common in Australian government contracts, particularly for defence related projects. However, the jurisprudence establishes that they should be used cautiously and only in exceptional circumstances as the impact of enacting these clauses can be significant for defence industry members
3. **Australian Defence IP Framework:** The Australian defence contract IP framework was discussed, highlighting the importance of understanding your intellectual property rights to ensure they are appropriately identified and protected before entering into a defence contract with the Australian Government.
4. **Defence Procurement Regulations:** The defence procurement process is governed by regulations and legislation, including the *Public Governance Performance and Accountability Act 2013* (Cth), its delegate *Public Governance, Performance and Accountability Rule 2014* (Cth), and the Commonwealth Procurement Rules aim to ensure transparency and accountability to the Australian taxpayer for government funded projects.
5. **IP Management Guidelines:** The Intellectual Property Principles for Commonwealth Entities 2018 and the ASDEFCON Technical Data and IP Commercial Handbook provide guidelines for the management of IP in the defence industry, which defence contractors should understand to protect their IP.
6. **Understanding IP Obligations under the ASDEFCON:** The webinar highlighted the importance of understanding the different categories of IP in ASDEFCON contracts, such as Technical Data, Software, and

Contract Material. Appropriately identifying IP and any relevant export control legislation was also advised to defence industry members and the importance of understanding which IP in your business is essential. Conducting regular audits of your IP assists mitigating future risk in defence industry contracts.

7. **Negotiating Termination Strategies:** Strategies for negotiating termination for convenience clauses in defence contracts were suggested, including initial contract term limits barring an activation of the clause for a certain period of time, establishing a table of potential costs if the clause is activated, and developing a compensation formula.
8. **Navigating Defence Contracts:** The speakers emphasised the importance of understanding and negotiating contract terms, protecting IP rights, and being innovative and proactive in the defence industry, suggesting that companies should seek legal advice to help them navigate these complex issues.

Final Word

Understanding and protecting intellectual property rights, particularly in the context of emerging technologies such as artificial intelligence, is crucial in the defence industry. Companies should be innovative and proactive in developing and protecting their IP assets, and should not be afraid to negotiate contract terms with the government. It's also important to consider strategies to protect against the risk of contract termination or reduction of scope for convenience. Seeking legal advice can help navigate these complex issues.

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