

# SCIENCE & TECHNOLOGY AUSTRALIA

## POLICY SUBMISSION

17 NOVEMBER 2023

### DEFENCE TRADE CONTROLS AMENDMENT BILL 2023

Science & Technology Australia thanks the Department of Defence for the opportunity to give feedback on the Defence Trade Controls Amendments Bill 2023 Exposure Draft.

Science & Technology Australia is the peak body for the nation's science and technology sectors, representing 138 member organisations and more than 115,000 scientists and technologists. We connect science and technology with governments, business and the community to advance science's role in solving some of humanity's greatest challenges.

### RECOMMENDATIONS

- To avoid curtailing or unduly constraining critical Australian research, regulations should be developed on a risk-managed basis to navigate national security issues while maintaining Australia's ability to collaborate with international partners and recruit the world's best STEM talent to work in our institutions – with the Universities Foreign Interference Taskforce serving as a good model.
- To ensure that important discovery research collaborations and projects can continue, the Department of Defence should work closely with stakeholders to develop a sensible and workable definition of 'fundamental/basic research' to include in an exemption to the Defence Trade Controls Amendments 2023 Bill.
- To ensure researchers understand their obligations under the regulations, the Department of Defence should maintain effective online assessment and conduct comprehensive outreach – including through peak bodies. The department should also maintain dedicated resourcing to provide tailored and specific advice to stakeholders as needed.

### STREAMLINING COLLABORATION WITH THE US AND UK

Science & Technology Australia recognises the importance of enabling collaboration between AUKUS partners. Facilitating smooth and efficient knowledge transfer – as well as targeted investment and workforce development – will be critical to progress the AUKUS goals. This includes developing regulatory frameworks that align – or are comparable – to those of the US, which is the primary goal of the Defence Trade Controls Amendment Bill 2023.

Acknowledging the importance of the AUKUS partnership, Science & Technology Australia notes that there are many other important research collaborations and partnerships that are also critical to secure Australia's research capacity and maintain strong global relationships.

## INCLUSION OF ONSHORE ACTIVITIES – ‘DEEMED EXPORTS’

One of the most significant changes the proposed amendments will bring is that the transfer of DSGI controlled material to a foreign person without a permit will be an offence, even if that transfer takes place in Australia – the current Act captures only the actual export of material to another country. Science & Technology Australia notes this proposed change could have significant implications for researchers, given the high proportion of foreign nationals working in research roles in our country.

The strength of Australia’s STEM research capability depends on drawing on the best talent globally. A significant proportion of Australia’s STEM research workforce – from PhD scholars right through to senior researchers – is overseas-born. Australia is currently seen as a desirable and quality place to do STEM research, and Australia needs to continue to attract the best and brightest from all over the world to maintain our country’s strong research capability. Any new legislation must be developed through a careful, risk-based approach in which national security issues navigated while strongly maintaining Australia’s ability to recruit the world’s best STEM researchers to work in our teams.

It will be critical to establish a sensible threshold that does not constrain important global collaboration and supports Australia’s STEM research workforce to continue to draw on brilliant global talent, while concurrently protecting our critical national security interests.

### Science & Technology Australia recommendation 1:

To avoid curtailing or unduly constraining critical Australian research, regulations should be developed on a risk-managed basis to navigate national security issues while maintaining Australia’s ability to collaborate with international partners and recruit the world’s best STEM talent to work in our institutions – with the Universities Foreign Interference Taskforce serving as a good model.

## REGULATIONS TO DEFINE EXEMPTIONS

Much of the specific detail that will determine exactly how researchers may be affected by the new amendments to the Act would be laid out in the regulations, which are yet to be developed. Close consultation with the sector as regulations are developed will be essential – and appreciated by the sector – to avoid unintended consequences that damage Australia’s research and industry sectors.

**An exemption that covers basic research (also known as discovery research or fundamental research) will be crucial to ensure Australia’s capacity to pursue bold research breakthroughs is maintained.**

We note with approval the current [Defence and Strategic Goods List 2021](#) contains exemptions for material in ‘the public domain’ and ‘basic scientific research’: *experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.*

Limited exemptions also exist under the Section 15 (4)(c) of the Act for transactions involving countries on the Foreign Countries List.

Maintaining a similar approach with regulations that include exemptions that ‘whitelist’ specific important partner countries and/or for discovery research would be a sensible approach that would enable important research collaborations to continue.

Noting the purpose of the Bill is to align Australia’s regulatory regimes with those of the US, Science & Technology Australia notes the definitions included in the US legislation:

International Traffic in Arms Regulations (ITAR §120.43):



**Basic research** means a systemic study directed toward greater knowledge or understanding of the fundamental aspects of phenomena and observable facts without specific applications towards processes or products in mind. It does not include applied research.

**Applied research** means a systemic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met. It is a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Export Administration Regulations (EAR §734.8(c))

**Fundamental research** means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

### **Science & Technology Australia recommendation 2:**

To ensure that important discovery research collaborations and projects can continue, the Department of Defence should work closely with stakeholders to develop a sensible and workable definition of ‘fundamental/basic research’ to include in an exemption to the Defence Trade Controls Amendments 2023 Bill.

## **ENSURING MINIMAL ADMINISTRATIVE BURDEN**

Given the high compliance load already on the sector, it is important to ensure administrative and compliance burdens are minimised wherever possible.

For researchers requiring permits to continue their work, permit application processes must be streamlined and efficient – with fast processing and notification times.

It will be critical that the Department of Defence provides adequate support and guidance to both industry and research sectors to assist stakeholders to navigate the requirements of the Act and DSGI regulations and to meet their obligations. Comprehensive explanatory materials, including online assessment tools to help stakeholders identify their responsibilities as well as factsheets and outreach to universities will be needed to ensure the sector understands both the bill’s context and the implications when the amendments come into force.

This should include dedicated resourcing that includes a clear contact point in the Department through which stakeholders can access specific and targeted advice. This will enable stakeholders to meet their obligations as well as prevent unnecessary permit applications, which would be a drain on both university and departmental resources.

Research funding agencies are excellent conduits for information dissemination, as they have extensive researcher networks and high engagement with the community.

Science & Technology Australia would also be happy to facilitate outreach events through our extensive member network.

### **Science and Technology Australia Recommendation 3:**

To ensure researchers understand their obligations under the regulations, the Department of Defence should maintain effective online assessment and conduct comprehensive outreach – including through peak bodies. The department should also maintain dedicated resourcing to provide tailored and specific advice to stakeholders as needed.



Please do not hesitate to contact us if we can help with further information or advice to the department.



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