

31 May 2024

Mr Greg Moriarty AO
Secretary
Department of Defence
Sir Thomas Blamey Square
Russell ACT 2600

Dear Mr Moriarty

Submission to Defence Trade Legislation Amendment Regulations consultation

The Australian Academy of Technological Sciences and Engineering (ATSE) is a Learned Academy of independent, non-political experts helping Australians understand and use technology to solve complex problems. Bringing together 900 of Australia's leading thinkers in applied science, technology and engineering, ATSE provides impartial, practical and evidence-based advice on how to achieve sustainable solutions and advance prosperity.

ATSE thanks the Department of Defence for the opportunity to respond to the proposed regulatory changes made under the Defence Trade Controls Act 2012 in light of the passage of recent amendments to that legislation. ATSE appreciates the Australian Government's consultation on the legislative and regulatory changes and the amendment made to the legislation, based on input from us and other organisations, to exempt basic research. ATSE also welcomes the provision in the 2024-25 Federal Budget for the Department of Defence to create educational resources enabling researchers and institutions to comply with obligations, as recommended by ATSE in the previous consultation. Given much research activity takes place outside the university ecosystem, and therefore without the support of universities' established defence assessment infrastructure, there is an urgent need to support industry, non-profits and other institutions engaged in research to comply.

ATSE remains conscious of adverse impacts of trade controls on Australian research, which will be subject to review after three years. To minimise the impact of the new regulations on Australia's research and development sector, ATSE recommends adding the impact of research to the criteria for deciding whether the supply of Defence and Strategic Goods List (DSGL) technology to a foreign person in Australia is prejudicial to the security, defence or international relations of Australia listed in Section 8 (3). Specifically, ATSE believes that item 3 of the table in Section 8(3) should read "Whether preventing the supply of DSGL technology may have an adverse effect on Australian **research**, industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia".

Section 8 outlines the criteria the Minister must consider for making decisions on whether dealings on DSGL goods and technology are prejudicial to security, defence or international relations. The proposed section 8(3) outlines criteria specific to foreign persons, outlining several risks that must be considered. Item 3 of the criteria contains a provision to requiring the Minister to consider "Whether preventing the supply of DSGL technology may have an adverse effect on Australian industry, trade and economic prosperity to the extent

that it may adversely affect the security, defence or international relations of Australia". As currently drafted, this provision fails to consider other factors that may impact security, defence or international relations.

In some cases, a defence research project with a non-AUKUS regional partner may not have significant implications for industry, trade or economic prosperity, but may still significantly contribute to Australia's security and international relations through building closer defence ties. For example, sponsored clinical trials in Australia may be funded by another nation's defence department, even though this research would usually not be considered defence research. While the US is the largest overseas funder of clinical trials, there are significant contributions from non-AUKUS nations, with China being the next largest overseas funder¹.

Including Australian research in this provision would help to ensure that strategic or internationally valuable research that can impact Australia's security, defence or international relations is properly considered. Approximately one third of researchers in Australia were born overseas, making it likely that Australian defence research may include non-Australian nationals. Excluding these experts may hinder the Australia's defence research sector and so consideration should be given to this by the Minister.

Amending item 3 in the table in section 8(3) to read "Whether preventing the supply of DSSL technology may have an adverse effect on Australian research, industry, trade and economic prosperity to the extent that it may adversely affect the security, defence or international relations of Australia" will help prevent unforeseen negative impacts on Australia's research capability.

If you would like any further information or would like to engage with our network of over 900 engineering, technology and applied science experts please contact academypolicyteam@atse.org.au.

Yours sincerely

Dr Katherine Woodthorpe AO FTSE FAICD
President

Kylie Walker
Chief Executive Officer

¹ Bellberry, 2024. Clinical Trials Activity Report 2023. Accessed from <<https://bellberry.com.au/clinical-trial-activity-report-2023/>>