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1 February 2024

Senator Raff Ciconne
Chair, Senate Foreign Affairs, Defence and Trade Legislation Committee
Department of the Senate
Parliament House
Canberra ACT 2600
by email: fadt.sen@aph.gov.au

Dear Chair,

Inquiry into the Defence Trade Controls Amendment Bill 2023

The University of Sydney welcomes the opportunity to make a brief submission to the Committee's review of the (Bill) to complement the Group of Eight's (Go8) more detailed submission and recommendations.

We understand there are significant gaps in the coverage of the *Defence Trade Controls Act 2012 (Cth)* (DTC Act), which need to be closed to protect Australia's sovereignty and give the United States (US), the United Kingdom (UK), and other trusted countries, the confidence to share sensitive technology and skills with Australia, its companies and research institutions.¹ The design and implementation of the DTC Act benefited from constructive engagement between the research sector and the Department of Defence and we are keen to see this dialogue continue as the Bill and supporting regulations are progressed.

We strongly support the efforts of the Australian, US and UK governments (under the AUKUS partnership) to foster cooperation between their industry, higher education and research sectors – by creating a permit-free environment for supplies of Defence Strategic Goods List (DSGL) goods, technologies and services. A large share of our international research collaborations are with partners from the US and UK, so we welcome the Bill's proposed permit-free regime for DSGL supplies to citizens, permanent residents and entities of the US and UK. Reducing regulatory compliance barriers to technology transfer and skills exchange between AUKUS partners by strengthening the alignment of defence export control frameworks will help speed up R&D and innovation.

In our [November 2023 submission](#) on the exposure draft of the Bill we raised two key concerns. First, the absence of any regulatory impact assessment at that time. Second, the lack of details from the Department of Defence about its proposed 'Fundamental Research' exception from the Bill's controls, and about the various other exceptions that Defence was understood to be considering, but had not released publicly at that point.

Since then, Defence released a detailed [impact analysis statement](#) alongside the Bill's tabling in Parliament on 30 November 2023, in which it committed to addressing many of the concerns we had raised in our feedback on the exposure draft of the Bill. Then, late in December 2023, Defence released the draft text of its proposed 'Fundamental Research' definition to replace the 'Basic Scientific Research' definition currently in the DSGL.²

Defence's proposed 'Fundamental Research' definition is based on the text in the US's export control regulations and its precise wording is critical to Australian universities because the definition will determine the types of research and associated activities that fall inside and outside the scope of the DTC Act, once amended. We agree with the Go8 that the clarity and scope of Defence's draft 'Fundamental Research' definition can be improved with some minor edits and we support their recommended changes. However, even with Defence's proposed wording, the definition would give Australian universities and their researchers far greater equivalency with their counterparts in the US than currently exists.

¹ Since the DTC Act commenced in 2012, it has failed to regulate supplies of DSGL technology to foreign persons that occur wholly inside or outside Australia, [Dr Vivienne Thom's independent review of the Act's implementation in 2018](#) identified these as key gaps that would need to be addressed by amendments to the Act.

² The [Department Defence's draft 'Fundamental Research' definition](#): "Fundamental Research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research whose results are restricted for proprietary reasons or national security reasons."



While we are far more comfortable with the Bill than we were last November, in addition to some small tweaks to the 'Fundamental Research' definition as recommended by the Go8, we have some remaining concerns. We hope these concerns can be addressed through the Higher Education and Research focused Working Group that Defence has committed to establishing to advise on additional exceptions, as well as the content of the supporting regulations and implementation of the changes. Our remaining concerns include:

- The comprehensiveness of the countries on the Foreign Country List (FCL) and whether the list can be expanded to include additional countries of strategic importance to Australia including India, Indonesia, South Korea, Singapore and Malaysia. We are pleased Defence has agreed in its impact statement to review the list.
- The treatment as 'employees' of Higher Degree by Research (HDR) students and affiliate title holders of Australian universities who are citizens or permanent residents of a country on the FCL – so that they are also covered by the foreign employee exception.
- The treatment of Australian citizens who hold another citizenship (i.e., dual citizens) of countries not on the FCL.
- The extension of the Bill's 'resupply' exception to cover supplies to all FCL citizens and permanent residents (not just employees of an Australian entity who are from FCL countries).
- The need for transition arrangements and potential grandfathering for a likely small number of current staff and HDR students who may be researching in areas involving DSSL technology and potential supplies, but who are not covered by the Fundamental Research, FCL or other exceptions.
- The need for a review of implementation of the Bill's new requirements 18-24 months after the new offence provisions take effect (that is, after the 12-month transition period), and again we are pleased that Defence has committed to engaging with the working group about a review of implementation.

The work of the Higher Education and Research Working Group will be critical in terms of maximising the equivalency of Australia's export control regime with those that apply to universities in the US and UK, as well as regarding the development of online training material and the timing of an implementation review.

We trust this feedback is helpful to the Committee and would be happy to provide further information if that would be of assistance.

Yours sincerely,

Professor Emma Johnston
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