



Australian Academy of Science

Ian Potter House, Gordon Street, Canberra ACT 2601

Secretary Science Policy Professor David Day FAA

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Dr Vivienne Thom AC
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Dear Dr Thom

REVIEW OF THE *DEFENCE TRADE CONTROL ACT 2012*: SUPPLEMENTARY SUBMISSION

On 22 May 2018 the Australian Academy of Science provided a submission to the Review of the *Defence Trade Control Act 2012*. The Academy has subsequently become aware of a late submission to the Review by the Department of Defence. The Department's submission makes recommendations inviting the Review to consider additional control measures for dual-use or uncontrolled technology well beyond the scope of the present system.

The Academy believes that further restrictions on Australian researchers' ability to engage in international research collaboration would be significantly detrimental to Australia's national interest; limiting our ability to benefit as a nation from the many international research collaborations and expertise on which a substantial proportion of our economy relies.

Response to the Department of Defence submission.

The Department recommends expanding its powers to include technologies included on the Defence Strategic Goods List (DSGL), as well as uncontrolled technologies (i.e., technologies not listed on the DSGL):

- **Department of Defence Recommendation 1:** The Department of Defence requests that the review consider measures to require a person to apply for a permit to supply or transfer DSGL *or uncontrolled technology* to foreign entities when the Australian Government notifies them that it has reason to believe the technology is significant to developing or maintaining national defence capability or could be used to prejudice the security, defence or international relations of Australia.
- **Department of Defence Recommendation 2:** The Department of Defence requests that the Review consider expanding the power to prohibit the supply of technology to include both DSGL *and uncontrolled technology*.

If adopted, these recommendations would represent a significant departure from the current system that was developed and agreed through a process of comprehensive consultation with sector stakeholders. It is the view of the Academy that such changes would undo the careful and appropriate balance struck in previous iterations of the Defence Trade Controls Act (DTCA).



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Specifically, the Academy believes that the Department's recommendation to expand the scope of the Act beyond the DSTG to effectively include *any other technology* would represent a significant and unnecessary overreach.

Such changes would have the potential to significantly disrupt Australian research and research training, and could limit opportunities for important international research collaboration.

If enacted in the form recommended by the Department, these measures would seriously impact Australia research capacity, and our standing as an international destination for research training and investment. In the view of the Academy, the uncertainty created by such changes would significantly suppress the pace of Australian innovation and related economic and social development. Under such a change, any technology could potentially be restricted or suppressed, irrespective of whether or not it had been included on the DSGL.

Australia has an agreed and functional mechanism for identifying technologies with potential military applications which should be controlled: inclusion on the DSGL. As a legal instrument, the DSGL allows for transparency, consultation and Parliamentary oversight. The Defence submission proposes that this mechanism is not sufficient, and recommends expanding the power of the Australian Government in a way that would reduce the utility of the DSGL and undermine its purpose. The Academy does not support these recommendations and strongly questions the assumptions leading the Department to make such a broad and unsupported claim. The Department also recommends expanding controls on the publication and communication of DSGL technology:

- **Department of Defence Recommendation 3:** The Department of Defence requests that the Review give consideration to expanding the DTC Act controls relating to the publication of DSGL technology, the supply of DSGL technology in preparation for publication, and brokering of DSGL technology to regulate categories of sensitive technologies found in Part 2 of the DSGL.

The legislative changes recommended by the Strengthened Export Controls Steering Committee in 2015 recognised and maintained the right of researchers to publish and communicate technology listed in Part 2 of the DSGL – technology with legitimate civilian purposes and applications. The legislative changes were seen to strike an appropriate balance between national security concerns on one hand and the responsible practice of science on the other. The Academy does not support this recommendation.

Finally, the Department recommends substantially expanding its monitoring and compliance powers under the DTCA. The Academy is concerned that if enacted, such a change could introduce the possibility of warrantless search and seizure powers to effect compliance with the Act. This is clearly well beyond the scope of the activities envisaged in the Act.

In summary, the Academy holds that the combined effect of the Department's recommendations if enacted would damage the ability of Australian researchers to participate in innovative research activities and of Australians more broadly to benefit from a strong and internationally connected domestic research capacity.



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The Defence recommendations amount to the unilateral ability to prohibit, control or regulate any technology, irrespective of its status as a listed technology on the DSGL, and the ability to suppress publication of any given research activity. Such a regime would create enormous uncertainty, with no ability to determine whether a technology would be allowed to be developed, deployed, communicated or exported. This environment would not be conducive to investment in high quality research.

The Academy supports the aims and purpose of the Defence Trade Control Act and has stated in its previous submission to this review that the Act appears appropriate and fit for purpose in its current form. Further, the Academy supports a cooperative, consultative approach to ensuring appropriate regulation of potentially dangerous technology, and a trade controls regime that is subject to appropriate regulation and Parliamentary oversight.

The Academy does not support unnecessary regulatory overreach that impinges on the right and ability of scientists to conduct science, and therefore does not support the Department's recommendations.

To discuss or clarify any aspect of this supplementary submission or to arrange an appearance before the Review, please contact Dr Stuart Barrow, Senior Policy Analyst at stuart.barrow@science.org.au or 02 6201 9464.

Yours sincerely

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Secretary Science Policy