



**Science & Technology** AUSTRALIA

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## Review of the Defence Trade 2012

**16 July 18**

To Dr Vivienne Thom AM,

Thank you for the opportunity to provide a supplementary submission to the Review of the Defence Trade Controls Act 2012.

Science & Technology Australia (STA) is the peak representative body for more than 70,000+ scientists and technologists in Australia through our member organisations, including associations and societies, research institutes, and research strategy bodies such as councils of deans. Our mission is to connect science and technology with governments, business, and the community, to enhance the role, reputation and impact of science.

STA understands the importance of regulating sensitive research and technology and the role that such regulation plays in Australia's national security. However, it is also important to ensure regulation on research and development is designed so as to avoid negative impact on the free exchange of ideas.

International collaboration in research and investment from private sector stakeholders with foreign interests should be encouraged whenever in Australia's interests. Any regulation of that may discourage such collaborations must be considered carefully before implementation.

**STA considers the Defence Trade Controls Act to be fit for purpose and supports recommendations that the Act remain in its current form.**

In our submission below, STA has outlined concerns regarding some recommended changes to the Act including:

- Expanding the regulatory powers of the Act to include technologies not on the Defence and Strategic Goods List;
- Increasing regulation requirements for technologies included in Section 2 of the Defence and Strategic Goods List; and
- Expanding Enter and Search powers to technologies on the Defence and Strategic Goods List.

We welcome any further questions, and have expanded further on our concerns below.



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## Introduction

Science and Technology Australia (STA) supports the Defence Trade Controls Act 2012<sup>1</sup> in its current form and considers it fit for purpose. STA respects the need for this Act and its role in regulating the trade of research and technology; particularly research that has direct military applications.

We commend the successful education and outreach that has been undertaken by the Department of Defence in the implementation of the Defence Trade Controls Act. The forms and processes associated with the regulation of technology are functional and transparent.

STA is, however, concerned with recommendations by the Department of Defence, which look to extend the regulatory powers under the Act to include uncontrolled technology and items under Section 2 of the Defence and Strategic Goods List<sup>2</sup> (DSGL).

It is important that any regulatory Act strikes a balance between our national interests and the security of Australia, and the regulatory burden placed on research and industry. STA is concerned that the changes proposed by the Department of Defence Strategic Policy and Intelligence group<sup>3</sup> would create obstacles for international business activities and place an undue burden on universities and research institutions.

After consultation with affected member organisations of STA, **we see no evidence to suggest the Defence Trade Controls Act needs modification and recommend it remains in its current form.**

## Regulating uncontrolled technology

The current use of the DSGL to regulate the export of both military and dual-use technologies allows for the transparent and clear regulation of technology. Regular reviews of the DSGL, and the capacity to add technologies to the list through the Defence and Strategic Goods List Consultation process<sup>4</sup>, allows for items to be considered for regulation in a timely and appropriate fashion.

The DSGL also provides a clear set of guidelines for research and business, setting out the requirements of work undertaken with technologies included on this List. STA is concerned that extending the regulatory capacity of the Act to include research and technology that is not outlined in the DSGL would discourage industry investment in long-term research by creating a level of uncertainty unacceptable to corporate investors.

Business investment in research and technology requires long-term planning and likely outcomes. Under the current legislation it is possible for investors to predict, with a reasonable level of certainty, if a technology will be restricted

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<sup>1</sup> [“Defence Trade Controls Act 2012”](#) Federal Register of Legislation, Accessed July 2018

<sup>2</sup> [“The Defence and strategic Goods List”](#) Department of Defence, Accessed July 2018

<sup>3</sup> [“Submission to the Review of the Defence Trade Controls Act”](#) Department of Defence Strategic Policy and Intelligence Group, 2018

<sup>4</sup> [“Defence and Strategic Goods List Consultation”](#) Department of Defence, Access July 2018

using the DSGL. Increasing the level of uncertainty in international technology development will discourage industry investment and specifically international investment in Australian research and development.

**STA considers the current DSGL consultation process to be sufficient in the regulation of new technologies, and recommends against extending regulatory powers to “uncontrolled” technologies.**

### **Over regulation of Section 2 tech on the DSGL**

During the development of the current Defence Trade Controls Act there were substantial concerns raised regarding the level of regulation required under the original version of the Act. These concerns centred around the communication and publication of research that was considered dual-use technology and would affect universities and other research institutions. These concerns persist.

The original Act did not include different regulatory controls for technologies in Section 1 *versus* Section 2 of the DSGL. After extensive consultation by the Strengthened Exports Controls Steering Group<sup>5</sup> it was suggested that regulation of publications for dual-use technologies resulted in undue burden on universities and research institutions.

Increased regulation of dual-use technologies was estimated to cost the university and research sector \$473k to initially implement and \$232k each year to maintain<sup>6</sup>. While the initial implementation may now be less than estimated due to the partial implementation that has occurred, there is no evidence to suggest that the ongoing regulatory burden would be less costly.

Beyond the research and university sector it was estimated that the regulation of all goods on the DSGL would be \$87.035 million per year for stakeholders<sup>7</sup>. This estimate does not take into account any extra regulatory burden that may occur if uncontrolled technologies are regulated as previously described.

The goals of this Act are to protect Australia’s interests and provide international partners with the required assurances that shared technologies remain secure. Exemptions for the publication of dual-use technology research is consistent with similar regulatory Acts in the US and the UK, and there is no evidence to suggest that Australia requires more strict regulation than our international partners.

**STA recommends against extending the regulatory burden of research and publication to items on Section 2 of the DSGL**

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<sup>5</sup> [“The Strengthened Exports Controls Steering Group”](#) The Australian Government, Accessed July 2018

<sup>6</sup> [“Defence Trade Controls Amendment Bill 2015 Explanatory Memorandum”](#) The Parliament of the Commonwealth of Australia, 2015

<sup>7</sup> [“Defence Trade Controls Amendment Bill 2015 Explanatory Memorandum”](#) The Parliament of the Commonwealth of Australia, 2015

## Expansion of enter and search powers

STA is deeply concerned with the recommendation to expand enter and search powers included in the Defence Trade Controls Act to all items in the DSGL. While STA understands the importance of these powers as they relate to Part 3 and Part 6 of the Act (the Australia-US Trade Co-operation Treaty<sup>8</sup>) there is no evidence to support expanding these powers.

Expansion of the enter and search powers to all technologies outlined in the DSGL, as well as specified uncontrolled technologies, would give regulatory officers unprecedented access to research and technology. There has been no evidence to suggest that research institutions and universities are not complying with the Act in its current form, or that an expansion in such powers would benefit Australia's national security. Therefore, there is no basis upon which to increase monitoring powers.

As outlined by the submission provided by the Department of Defence, and confirmed through consultation with STA's affected member organisations, the Department's outreach and education program has successfully ensured compliance, by making compliance with the Act both easy and clear for research institutions.

If, however, the regulatory powers of the Act are increased, compliance will introduce undue burden and obstacles to success. For research institutes it will increase compliance costs, for researchers it will increase administrative burden, and for investors it will mean some uncertainty in cases where search and enter powers may apply (i.e. potential delays, or legal costs). As such it may stifle innovation in this space and lead to institutes abandoning these types of projects to mitigate risk.

**STA recommends against the extension of the monitoring powers to all items on the DSGL.**

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<sup>8</sup> ["Defence Trade Controls Act 2012"](#) Federal Register of Legislation, Accessed July 2018