

Senator Raff Ciccone

Chair, Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
Canberra ACT 2600

30 January 2024

Dear Senator Ciccone

The Australian Technology Network of Universities (ATN) welcomes the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the Defence Trade Controls Amendment Bill 2023.

We understand the importance of these changes and that serves to highlight the importance of due diligence and measured implementation. The Government should commit to working closely with all Australian universities on the development of subsequent guidelines and processes associated with the legislation.

Australia's universities are well positioned to participate in this research and development due to an ever-increasing awareness of, and vigilance towards, security risks. Universities, including our own, have worked diligently with the Government through initiatives such as defence trade controls and the University Foreign Interference Taskforce. These initiatives operate most effectively through co-design and cooperation.

ATN is committed to supporting the success of the AUKUS partnership through deep collaboration on research and skills development and affirms our support for the parts of the Bill necessary to enable strong and effective relationships.

ATN reiterates our recommendations delivered in our submission to the earlier consultation on the exposure draft of the Bill (see attached) and makes some additional comments.

To better enable and support Australian universities to participate in AUKUS while maintaining our wide array of other beneficial global partnerships, ATN recommends that the Government should support the implementation of the Bill by:

- 1. Consulting and engaging with universities on the supporting regulations to avoid any unintended consequences, especially around the status of dual-citizens and definition of research**
- 2. Proactively collaborating and sharing information to support universities and staff to understand and implement the requirements and create a sustainable risk appetite and environment for global collaboration**
- 3. Ensuring the whole system of security and regulation is operating cohesively**

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Recommendation 1: Consulting and engaging with universities on the supporting regulations to avoid any unintended consequences, especially around the status of dual-citizens and definition of research

There is still some ambiguity in relation to the application and interpretation of the defence trade control definitions and provisions in the Bill, as well as the Defence and Strategic Goods List (DSGL), which may lead to confusion or even unintentional non-compliance.

There are also some important practical implications to the Bill in realising the goals of AUKUS. The goals are heavily reliant on STEM skills and research, but our ability to do this kind of work is currently highly dependent on a talent pipeline outside of the AUKUS nations. Expediting applications for residency or citizenship may be needed to service this demand.

Furthermore, given the current high reliance on international staff and students in research, we need to be cognisant that the Bill may create undue caution around research innovation in novel technological applications, particularly those with dual use.

Recommendation 2: Proactively collaborating and sharing information to support universities and staff to understand and implement the requirements and create a sustainable risk appetite and environment for global collaboration

ATN would welcome initiatives which would enhance and expand availability of trusted subject matter experts and communities of practice and networks across the higher education, industry, government, and community sectors, with a view to sharing knowledge and promoting and fostering responsible practices in compliance with defence trade controls.

For example, it would be useful to have guidance on the wording of research agreements in relation to the universities' expectations of research partners in exercising due diligence in relation to the Act. This would be important to helping educate our staff and students on the extent of their obligations.

Building the knowledge and understanding of staff and students is critical. This is especially important given that some offences under the Act will be treated as strict or absolute liability meaning that due diligence is not a defence.

Any ambiguity or lack of shared understanding also contributes, together with the higher education's low appetite for any risk of non-compliance in what is a highly regulated sector, to unnecessary self-exclusion from beneficial activities and the submission of a significant number of applications for permits where these are not required. This in turn creates unnecessary administrative and resourcing burdens for both the regulator and universities.

Recommendation 3: Ensuring the whole system of security and regulation is operating cohesively

The Act must strike a fine balance between fulfilling national security requirements and supporting trade, research and international collaboration – it must do this in light of the ambitious defence reform agenda set out in the Defence Strategic Review, and in light of international developments that may lie outside Australia's control or sphere of influence and that are unforeseen.

It is critical that defence trade controls exempt basic scientific research and the Government consider other ways in which responsible trade, research and international collaboration can be better enabled and supported.

The additional context around human rights in the explanatory memorandum is welcome and useful in the context of shaping university understandings of employee rights. These rights include the right to work in Australia, the presumption of innocence, and the right to privacy and reputational protection. In practice, it will be critical to ensure these rights and the principles underpinning them can be applied in complex cases related to university researchers.

Should you need any further information from ATN or our member universities, please contact us at info@atn.edu.au.

Yours sincerely,

Frank Coletta

ATN Executive Director (Interim)

Exposure Draft of the Defence Trade Controls Amendment Bill 2023

17 November 2023

The Australian Technology Network of Universities (ATN) welcomes the opportunity to provide a submission to the Department of Defence on the exposure draft of the Defence Trade Controls Amendment Bill 2023.

ATN believes that a wider level of engagement on the changes proposed in this Bill would have improved the development and policy design. While we note the short timeframes for consultation, we believe the Government should commit to working closely with all Australian universities on the development of subsequent guidelines and processes associated with the legislation.

We understand the importance of these changes and that serves to highlight the importance of due diligence and measured implementation. ATN looks forward to contributing to AUKUS and involvement in further extensive consultation on the implementation of these changes.

Recent events have demonstrated that we need a highly capable and dependable defence industry and research capacity. This necessitates international cooperation and collaboration – particularly in the context of AUKUS. Department of Defence and broader Government support is required to establish and foster trusted international research partnerships in specific areas of interest.

To capitalise on the foundation provided by AUKUS, researchers and industry will need to develop products and capability with increased collaboration. This is vital for increased interoperability and developing joint capability and knowledge. The AUKUS partnership is reliant on this kind of cooperation, particularly in Pillar Two where Innovation and Information Sharing are specified.

Australia's universities are well positioned to participate in this research and development due to an ever increasing awareness of and vigilance towards security risks. Universities have worked diligently with the Government through initiatives such as defence trade controls and the University Foreign Interference Taskforce. These initiatives operate most effectively through co-design and cooperation.

Changes in this Bill relating to deemed exports, re-exports and provision of services will address known gaps and strengthen Australia's defence export control framework.

Recommendations

ATN is committed to supporting the success of the AUKUS partnership through deep collaboration on research and skills development and affirms our support for the parts of the Bill necessary to enable strong and effective relationships.

To better enable and support Australian universities to participate in AUKUS while maintaining our wide array of other beneficial global partnerships, ATN recommends that the Government should support the implementation of the Bill by:

- 1. Consulting and engaging with universities on the supporting regulations to avoid any unintended consequences, especially around the status of dual-citizens and definition of research**
- 2. Proactively collaborating and sharing information to support universities and staff to understand and implement the requirements and create a sustainable risk appetite and environment for global collaboration**
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Further information

The collaboration, cooperation and exchange envisioned in the AUKUS agreement will rely on free transfer of people and technology between AUKUS partners. This security environment will require preferential arrangements that may require additional controls for transfers between other partners. This might mean restricting or giving up other opportunities, but the Government should be prepared to make difficult decisions about this.

Universities need more support for exports from the Government, especially to encourage activities with key national partners. If export and intellectual property controls with preferred partners like the United States are too restrictive, then researchers may look for opportunities with other countries. This would have an adverse impact on the success of the AUKUS partnership.

Recommendation 1: Consulting and engaging with universities on the supporting regulations to avoid any unintended consequences, especially around the status of dual-citizens and definition of research

The Government will need to extensively consult with universities on the supporting regulations and their implementation. This includes:

- Replacing the 'Basic scientific research' definition in the Defence Strategic Goods List (DSGL) with a broader definition of research based on those included in the relevant US export control regulations to exempt basic and applied research where the resulting information is ordinarily published and shared broadly within the academic community.
- Confirming the status of dual-citizens and ensuring that any exemptions granted to employees of organisations also apply to PhD students who represent a significant part of the Australian research workforce.
- The definition of 'services' for the new offence pertaining to provision of DSGL services outlined in the Bill appears broad and vague. It is unclear what this would mean in a higher education and research setting. For example, would these provisions capture knowledge sharing or provision of 'know how' within a research collaboration?

Recommendation 2: Proactively collaborating and sharing information to support universities and staff to understand and implement the requirements and create a sustainable risk appetite and environment for global collaboration

Universities are necessarily reliant on partnerships that involve persons outside of the UK, US and Australia and these include students, staff, visiting researchers, industry and at times, government delegations. The amendments to the Bill will have repercussions for the openness of these relationships, and will require stringent protocols in place to manage who is included on certain research projects, or who even has access to this information (e.g., the risk of incidental disclosure).

These risks can be in part mitigated through augmentation of our existing training but due to the multi-functionality of many university spaces some risk will remain. A better and mutual understanding of these risks and mitigations in place would assist all parties.

Universities would benefit from a clearing up of the 'grey zone' of defence research. In so far as it is possible, decisions on who we can and should not collaborate with on defence and dual use technologies should be made in partnership with the Government. This should be viewed as a positive opportunity for the Government and universities to engage. Currently, advice received from Government is often lacking in the specificity needed for it to be useful and actionable.

Universities – and industry – would benefit from ongoing training and engagement on this particularly as the security risks, reputational damage and financial loss in the event of getting it wrong is critical. As a result of it being such a complicated issue many organisations end up foregoing opportunities or investing too much responsibility in a single person with the requisite expertise. Access to training and secure, ongoing advice would be ideal.

Recommendation 3: Ensuring the whole system of security and regulation is operating cohesively

We currently have a fast moving and dynamic environment with multiple intersecting regulatory components both within Australia and with our partners. The Act must be adaptable enough to enable us to operate in this complex environment. The Act needs to tread this line carefully and ensure that there are not unintended consequences of limiting research with overseas collaborators.

We look forward to further engagement in securing Australia's interests and enhancing our defence research capability.

Further enquiries should be addressed to:

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