29 October 2023

Professor Graeme Samuel AC and Mr Peter Tesch
Review Chairs – DTC Act Review
Defence Trade Controls Act Review Secretariat
PO Box 7901 | CANBERRA BC ACT 2600

Dear Professor Samuel AC and Mr Tesch,

ARMS DTC Act 2023 Review Submission

The Australasian Research Management Society (ARMS) is the Australasian association of research management professionals. Since its founding in 1999, the ARMS network has grown to involve more than 3500 members from universities, independent research institutions, government and health and research organisations from across the Australasian region including Australia, New Zealand and Singapore.

ARMS is dedicated to the development of research management professionals; the promotion of the profession of research management; and the advancement of the research enterprise, via development and promotion of international best practice for research management in Australasia and Singapore that is responsive to the changing factors that influence the research environment. It is ARMS professionals that administer research organisations' including universities' compliance with the DTC Act. We welcome the opportunity to put forward our submission and recommendations as part of the consultation process on behalf of research managers across Australasia.

Our response:

- **whether the Act is fit for purpose, including whether it contains appropriate controls to effectively manage the supply, brokering and publication of intangible technology;**
- **whether there are any gaps in the Act's controls;**
- **whether the Act strikes an appropriate balance between fulfilling national security requirements and supporting trade, research and international collaboration;**

Researchers and Institutions find the DSGL difficult to interpret due to the intersectionality of three drivers: (1) researcher (and/ or research organisation) interpretation of the basic science exemption; (2) researcher interpretation of the medical end-use exemption as it applies to research; and (3) the difficulty of applying DSGL technology thresholds to research activities where a technology may be purchased or invented that will only be used for basic research.

There is also a lack of clarity in relation to how exemptions to the permit process map onto the DSGL for basic research aligned activity; therefore individual academics are more likely to self-assess that they do not require a permit when they are in doubt. In practice, this can mean that institutions have researchers whose work meets the thresholds set in the DSGL, but those researchers self-assess their work is exempt from export controls and do not seek advice or undertake further actions.

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This creates challenges for research management professionals who are also attempting to interpret and advise on the basic science exemption.

A principles-based approach to information sharing could enrich the information contained in the DSGL so that academic interpretations are more likely to align with Defence objectives and intent. They would also significantly improve the explainability of the DSGL within a research context.

We recommend that anonymised decisions are published in relation to the categories in the DSGL, and if deemed necessary, only available for review by registered users who sign a deed of confidentiality. These rulings would provide access to information about the permits granted or denied for a given category of the DSGL, in relation to country of export and end-use, and potentially consignee and end-user. This information could be used by research organisations to understand the types of activities likely to require a permit, and the types of activities likely to be granted a permit. Such information would significantly enhance internal compliance and training activities within research organisations without further straining Defence resources.

Researchers and institutions regularly struggle with the definition of 'what is basic research?'. It is sometimes difficult to know where on the research spectrum the Australian definition of basic research stops. Using TRL levels may provide a clearer definition – e.g. TRL1 is fundamental and there is no identified application of the research at the time is being undertaken. TRL2 is where an application is identified/formulated but not yet tested to see if it works (no proof of concept). Therefore, the descriptors of basic and applied could be used and a TRL level also applied to give greater clarity. However, it must be clear if there are changes to the definition of basic research whether they will be applicable across all facets of research in Australia. The Australian Standard Research Classification (ASRC, 1998) is consistent with the Organisation for Economic Cooperation and Development (OECD) definition of research and experimental development as set out in the 2015 Frascati Manual. If there are different definitions in operation depending on the context, this would not add the clarity desired.

Further collaboration from government would be welcome, particularly to ensure that reviews such as the DTC, and other legislation, contributes to streamline the reporting processes for universities and research institutions.

- **whether the Act aligns with international best practice;**
- **any other matters considered relevant, including human rights considerations.**

In 2022 the UK updated their export control legislation to amend their definition of 'military end-use' as their previous control could only be applied to export of non-controlled items intended for military end use. The amended text now reads 'are, or may be intended, in their entirety or in part' for military end use[1]. The original text also did not allow the UK to 'fully address threats to national security, international peace and security, and human rights'. The UK has updated their assessment of a licence application to include eight criteria, one of which is 'Respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law'[2]. This means that the UK will not grant a licence if there is a risk that the export would facilitate internal repression including the potential for harm, repression and surveillance of people. The UK legislation takes into account human rights in export control law, and helps to future proof the legislation against emerging technologies, many of which are AI-driven and could be potentially used for such activity. Currently Australian law focuses on military / dual end-use and does not take into account human rights.

[1] https://www.legislation.gov.uk/uksi/2008/3231/article/12A)

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172067/uk_strategic_export_controls__annual_report_2022.pdf

The Review should consider the Act alongside existing regulation, policy and legislation relating to export controls and the protection of sensitive and critical technology.

Further alignment with similar Australian legislation needs to be made, as reporting and legislative requirements seem to be duplicated, or, may not be providing clear operating boundaries for institutions, such as the Security Legislation Amendment (Critical Infrastructure Protection) Act 2022. A single research arrangement at a an Australian research organisation has the potential to interact with multiple different compliance programs across multiple different Australian Government Departments and is thus very challenging to advise on.

For example, an Australian researcher in a university setting who is successful in a US Defence Grant, is also named on a Defence Industry Security Program contract, and which involves the supply and export of DSGL technology, would potentially trigger their host institution's relevant administration unit to make notifications, undertake internal compliance and/or commence permit applications across DECO (export controls), DFAT (foreign arrangements), and DISP (risk register & other compliance activities). The activity itself would likely be subject to that university's counter foreign interference framework in alignment with the UFIT Guidelines, and the academic's research area would likely require additional training and engagement due to a contextual change in the institution's internal sanctions risk assessments.

Given that the DTCA review is occurring in parallel to AUKUS-driven considerations regarding Australia adopting the concept of "deemed exports", and the *Safeguarding Australia's Military Secrets Bill* is drafted in such a way that it could capture security studies and military strategy lecturers giving talks overseas, ARMS advocates for a more holistic approach to the national security compliance burden for research in universities. The university sector has minimal resources to cover the increasing national security and defence compliance burden, which often falls to research management or other risk or compliance professionals undertaking multiple responsibilities. Often only 1 or 2 FTE per institution covers Export Controls, Sanctions, DISP, Foreign Relations, UFIT, the Foreign Influence Scheme, critical infrastructure and government consultation engagement and liaison. Further consideration should be made to ensure the legislative environment is cohesive and facilitates adherence to ensure that Australian research and international collaboration and engagement can continue to occur as effectively as possible.

The increasingly complex compliance burden for Australian research organisations but especially universities in this area risks creating a scenario where university professional staff are increasingly focused on complying with Australian Government legislation and less able to internally assess, mitigate and respond to institutional risks. A more cooperative model is recommended where staff secondments occur between the university sector and Australian Government agencies (in both directions). This would increase awareness of each sector's internal drivers, but would also work to combine resources, knowledge and experience, and build trusted people-to-people links between the university sector and government.

Similarly, whole-of-government consideration needs to be given to the national security and defence compliance architecture for research organisations and whether the additive complexity borne of legislative and compliance changes across the last five years is efficiently and effectively meeting the Australian Government's objectives.

We thank you for the opportunity to make a submission to the review. If you require any clarification, please contact us via ARMSCOO@researchmanagement.org.au.

Yours sincerely

Dr Tania Bezzobs
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