



19 March 2024

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Submitted via: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/AU-USpaceLaunches

Submission Due Date: 19 March 2024

Submission to the Joint Standing Committee on Treaties - Agreement between the Government of Australia and the Government of the United States of America on Technology Safeguards associated with United States' participation in space launches from Australia.

I respectfully tender to you this submission in relation to the inquiry by the Joint Standing Committee on Treaties into the agreement between the Government of Australia and the Government of the United States of America on Technology Safeguards associated with United States participation in space launches from Australia.

We refer to this agreement as the 'Technology Safeguards Agreement', or 'TSA' below.

Equatorial Launch Australia (ELA) is owner and operator of the Arnhem Space Centre (ASC) located near Nhulunbuy in Northern Territory, Australia. Our mission is to provide world-class launch services supporting testing, launch and recovery of space vehicles and payloads flown to and from all space orbits. The ASC is one of the first commercial spaceports to be developed globally.

ELA is the only commercial spaceport operator in the country to have successfully conducted space launches, having launched three times in 15 days during our 2022 campaign with NASA. As part of this campaign, ELA completed Australia's first ever commercial space launch, and these were the only commercial space launches ever conducted by NASA.

Following the NASA launches, we have pivoted ELA's business model to address unmet market needs in the 'NewSpace' commercial and national security markets including multi-launch campaigns and a "resident launcher" business model whilst also providing relief to congested spaceports globally. Work is currently underway to significantly add to existing launch capability to enable the ASC to serve as a multi-user commercial launch facility. ELA has either contracted, or is working towards contracts for launch and spaceport services, with up to nine international rocket companies and their payload customers concurrently. These international customers are located in the U.S., Europe and Asia. We have in place a five (5) year, 12 launch contract with Innospace from South Korea and expect to imminently sign at least two additional Asian companies, three to four European companies and when the TSA is finally in place, we will finalise the contracts with up to four U.S. based rocket companies. Please refer to our website for more information on ELA and the ASC at www.ela.space.

As a leading spaceport owner and operator, we fully support and welcome the signing of the Technology Safeguards Agreement which was tabled in Parliament on 28 February, 2024. We believe this agreement

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will strengthen commercial, institutional, and governmental ties between the United States and Australia and will have positive flow-on effects for the entire Australian space industry and adjacent industries.

I believe we are well positioned to comment on the agreement, and we seek clarification and/or make comment on the statements outlined below.

1. CLARIFICATION AND COMMENTS ON THE TSA ARTICLES

We seek clarification on and further detail of the following articles.

Article III - GENERAL PROVISIONS

Paragraph 2

"The Government of Australia may not use the funds obtained from Launch Activities for the acquisition, development, production, testing, deployment, or use of MTCR Category I systems (either in Australia or other countries), although it may use such funds for the development and improvement of the Australian space program. This provision does not prevent the transfer of such funds to the Commonwealth's consolidated revenue fund for distribution across Commonwealth programs."

- ELA intends to generate revenue from the charging of U.S. launch companies for both launch and launch-related services. We further expect to sell our location/site and services to U.S. rocket and payload/services companies to continue testing and development of their rockets/activities which includes our programs of testing and deployment for our customers.
- We plan to organise/administrate the generation of mission and ride sharing for payload access to launches for satellite and rocket companies globally.
- We request clarification on what is meant specifically by not using funds for 'testing and deployment', and what possible restriction might become imposed on ELA.

Paragraph 3 (e)

"The Government of Australia shall...enter into politically binding arrangements with other governments having jurisdiction and/or control over entities substantially involved in Launch Activities by means of Non-U S Launch Vehicles. The substantive scope and provisions of these arrangements shall be equivalent to those of this Agreement, except for this Article and as otherwise mutually determined between the Parties "

- We understand this requirement to mean that these agreements are required to be equivalent to the scope of the TSA and the Technology Transfer Control Plan.
- Will a Memorandum of Understanding between the two countries be sufficient to meet this requirement?
- If so, will the Australian Space Agency (ASA) initiate and manage these arrangements with their national counterpart in support to the multinational missions?
- In this case we assume we would be consulted on the scope and implementation plans of these agreements.
- If not, ELA requests clarification of what is required for these politically binding arrangements to satisfy this clause.
- If supplementary memoranda or agreements are developed with foreign countries, are representatives of those countries, having signed arrangements with Australia and who satisfy the TSA, able to be authorised by the U.S. to allow them to consult with us on the scope of non-U.S.

rocket companies or payload operators accessing their own equipment in the presence of U.S. Representatives, in segregated areas, particularly after mating/integration?

- Will it be possible for those companies from non-U.S. countries to have access to their own equipment in segregated areas, assuming they are acting in accordance with their TSA-equivalent arrangement? Clarification is also sought on how this would happen after mating.

Paragraph 4

"For each Launch Activity, the Parties shall appoint an entity to oversee the exchange of U.S. Technical Data between Australian Participants and non-Australian entities involved in that Launch Activity."

- Who will be designated as the Australian liaison or entity for this role?
- What department will that person exist within?
- Will this entity be the ASA or be part of the Department of Industry, Science and Resources or the Department of Foreign Affairs?
- ELA requests that this entity exists within the Australian Space Agency to ensure the liaison has a good understanding of the implications of issues concerning this arrangement, particularly with concern to the impact of delays.
- ELA requests that this entity, including positions and the agencies they represent, and the actual processes, be identified prior to the enactment of the treaty on 3 July 2024.
- We request that a similar, or the same liaison, is established within the entity as point of contact for ELA and other Australian spaceports. This Australian Spaceport liaison could then act as an account manager to assist Australian spaceports to meet their TSA requirements.

Paragraph 9

"The Parties shall develop and implement arrangements elaborating the roles, responsibilities, and procedures to protect U.S. Launch Vehicles, U.S. Spacecraft, U.S. Related Equipment, and/or U.S. Technical Data from unauthorized disclosure between relevant agencies in the United States of America and Australia in relation to this Agreement, including, but not limited, to

- a. Possession of equipment,*
 - b. Disclosure and use of information and items,*
 - c. Access controls,*
 - d. Border controls, and*
 - e. Launch anomaly or failure."*
- ELA requests information about who will develop these arrangements, particularly the 'Launch anomaly or failure' from the Australian side. Furthermore, we request that industry and in particular, spaceports, be consulted in advance in relation to the development of these arrangements as they will have significant impact on our operations and commercial arrangements.

ARTICLE IV - CONTROL OF U.S. LAUNCH VEHICLES, U.S. SPACECRAFT, U.S. RELATED EQUIPMENT, AND U.S. TECHNICAL DATA

Paragraph 3

"For any Launch Activities, the Parties shall take the necessary measures to ensure that U.S. Participants retain control of U.S. Launch Vehicles, U.S. Spacecraft, U.S. Related Equipment, and U.S. Technical Data, unless otherwise authorized by the Government of the United States of America. To this end, the Government of Australia shall make available Segregated Areas and Controlled Areas, the boundaries of which shall be clearly designated in accordance with the Technology Transfer Control Plans and Technology Security Plans."

- ELA requests clarification of what is required to meet this clause for Segregated Areas and Controlled Areas and what is required in the Technology Transfer Control Plans and Technology Security Plans.
- We assume that similar to the Technology Assurance Agreement (TAA) approvals /restriction related to our NASA launches, that we will be mentioned/authorised on each launch/campaign TAA.

Article V - DISCLOSURE AND USE OF CERTAIN INFORMATION AND ITEMS

Paragraph 1

"This Agreement does not permit, and the Government of the United States of America shall prohibit, U.S. Participants from providing any assistance to Australian Participants relating to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, processing, or use of U.S. Launch Vehicles, U.S. Spacecraft, and/or U.S. Related Equipment unless this assistance is authorized by the Government of the United States of America. This Agreement does not permit the disclosure of any information related to U.S. Launch Vehicles, boosters, adapters with separation systems, payload nose fairings, U.S. Spacecraft, U.S. Related Equipment, and/or components thereof by U.S. Participants or anyone else subject to U.S. law, unless the disclosure is specifically authorized by the Government of the United States of America."

- ELA seeks clarification of this paragraph in terms of ELA being able to provide design support and equipment integration using ELA designs to U.S. companies. For example, ELA providing essential and detailed engineering and designs, which requires knowledge and details of U.S. rocket designs, for integration into elements including but not limited to: Launch Pad systems, Tracking and Telemetry, Flight safety management and termination system, launch preparedness and countdown equipment/systems.
- Are U.S. personnel with experience in U.S. space or defence industries required to be approved under TSA/ITAR if coming to work in Australia?

Article VI - ACCESS CONTROL

Paragraph 6

"The Government of Australia shall require that all Australian Participants display visible identification while performing duties associated with Launch Activities within Controlled Areas and Segregated Areas. Access to Segregated Areas shall be controlled by the Government of the United States of America or, as authorized in the export license(s) or authorization(s), by the U.S. Licensees, by means of identification that are issued only by the Government of the United States of America, or by the U.S. Licensees if authorized by the Government of the United States of America."

- ELA requests that it be understood and noted in implementation/side letters that ELA is able to add all personnel/agencies/companies on the TAA and support the application as it progresses through the State department.
- ELA requests further information on the authorisation process, including timeline, for Australians requiring access to segregated or controlled areas.
- ELA requests clarification of whether this paragraph is equivalent to requirements included in the ITAR. If additional procedures or restrictions are required, we request detail of those.

Article IX

Paragraph 1 & 2

“The Parties shall consult, at the request of either Party, to review the implementation of this Agreement. The Parties shall use reasonable efforts to identify, as appropriate, any adjustments that may be required to maintain the effectiveness of controls over technology transfer.”

and

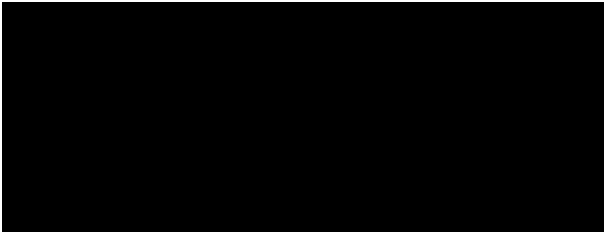
“Any dispute between the Parties regarding the interpretation and implementation of this Agreement shall be resolved by consultation through diplomatic channels.”

- ELA requests clarification of procedures if activities or authorisations are withheld from either the Government of Australia or the Government of the United States of America for any of the Articles or Paragraphs within the TSA.
- As the TSA covers commercial activities, the expeditious resolution of disputes is of paramount importance and therefore ELA requests that measures are put in place to ensure swift outcomes.

2. COMMENTS IN RESPECT TO THE NATIONAL INTEREST ANALYSIS 2024 (HEREAFTER REFERRED TO AS ATNIA 3)

1. ELA supports and agrees that the statement in the National Interest Analysis 2024 (ATNIA 3, point 8) that the TSA will contribute to Australia’s national interest through the opening up of new commercial opportunities for Australia’s space launch sector.
2. We understand and support the statement (ATNIA 3, point 4) that, without the agreement, U.S. space launch companies, U.S. government organisations and U.S. universities would be restricted from undertaking space launch activities in Australia except under specific and onerous TAA arrangements. Furthermore, we understand that the TSA is needed to allow the above-mentioned U.S. entities to consider Australian launch operations/mission as options to access alternative and desired orbits, relieve congestion at U.S. space launch facilities, and work cooperatively with the Australian space sector.
3. ATNIA 3, point 17 acknowledges that the TSA does not restrict Australia from developing space launch vehicles or space vehicles of any description. Further to ATNIA 3, points 11 and 13, the removal of restrictions of U.S. spacecraft and other payloads being launched in Australia using Australian launch vehicles could help to stimulate the Australian launch vehicle market. The current Australian launch vehicle market is relatively immature. Considering that the U.S. has the largest commercial space launch market in the world, and with the current levels of congestion at U.S. spaceports, the removal of restrictions on such U.S. involvement in Australian launch activities through the enactment of the TSA will drive demand for launch services. This will increase investment into this market – a benefit to the Australian space sector.

4. Further to ATNIA 3, points 12 and 18, we agree that the enactment of the TSA will allow Australia to leverage its technical and business skills and experience, in combination with the unique global geographical position, low population density, low traffic air and sea corridors and geopolitically stable environment to attract U.S. launch activities.
5. As support to ATNIA 3, points 14 and 15, we state that the Arnhem Space Centre is being developed as a commercial spaceport in regional northern Australia. The enactment of the TSA and the expected demand for launch services it will bring will have a positive flow-on effect to the local economy of the surrounding area in Nhulunbuy and the Gove Peninsula. This is of particular importance to the area considering the planned exit of mining activities. This increased space launch activity will also help to grow high-skilled tech jobs in the region and provide employment opportunities for locals including Indigenous workers.
6. ATNIA 3, point 56 states that Australia's implementation of the TSA will be led by the Department of Industry, Science and Resources, in consultation with the Department of Foreign Affairs and Trade and the Department of Defence and other relevant departments and agencies that administer legislative and regulatory frameworks that intersect with the TSA and the approval of space launch activities in Australia. The commercial nature of spaceports and space launch activities covered by the TSA will require rapid turnaround of departmental decision making and answers to queries. ELA requests that implementation of the TSA reside with one department or agency to minimise delays in seeking clarifications, answers to questions and authorisations as required.
7. Rather than deleting or diminishing any sovereign capability, we believe the TSA will enable a true sovereign capability and a sustained 'access to space' sector to flourish.



Equatorial Launch Australia

References

1. TSA final Treaty: https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2024/AU-US_Technology_Safeguards_Agreement/AUS-US_TSA.pdf?la=en&hash=6EBA75E4E4595BFB69C8A09DCDA0AF0647F41841
2. TSA Side Agreement: https://www.space.gov.au/sites/default/files/2024-03/TSA%20Side%20Arrangements%20signed_PUBLIC.pdf
3. National Interest Analysis: https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2024/AU-US_Technology_Safeguards_Agreement/NIA.pdf?la=en&hash=73570DA22419C4D98F22B4186CE299BC7472523C