Australian Government

Australian Space Agency

Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

Thank you for the opportunity to give evidence at the public hearing on 13 May 2024 in support of the Australia-United States Technology Safeguards Agreement (the TSA).

The Australian Space Agency notes that all witnesses that gave evidence and all nine of the public submissions were supportive of the TSA and called for it to be brought into effect.

Please find enclosed a response to the Questions on Notice raised at the public hearing. The response provided should not be considered as industry guidance or as legal advice by the Australian Government. The response is intended to provide clarifying information to the Committee to help inform the Committee's consideration of the treaty.

Please also find enclosed to assist with the Committee's consideration of the TSA, an associated non-binding arrangement (Side Arrangement). This Side Arrangement was developed in parallel with the TSA and in accordance with Article III.9 and provides further clarification on key aspects of the TSA.

Thank you again for the opportunity to provide evidence and we would be happy to discuss any aspects of the response further with the Committee if required.

Yours sincerely

[redacted]

Chris Hewett
General Manager, Space Policy Branch
Australian Space Agency

31 May 2024

Joint Standing Committee on Treaties
ANSWERS TO QUESTIONS ON NOTICE
Department of Industry, Science and Resources
Inquiry into the US-Australia Technology Safeguards Agreement
13 May 2024

QUESTION No.: 1

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 2-3)

CHAIR: Perhaps you can just take this on notice for the committee's interest: if there are some up-to-date numbers on what the sector is valued at and how many direct jobs are involved at present, and then any estimates about how that might grow, I think that would probably be useful for us in the way that we report on the agreement.

ANSWER

The size of the launch sector as of financial year 2021/22 was $27 million with 17.5 per cent growth year on year since financial year 2016/17. The launch sector includes launch service providers and spaceport operators, launch vehicle manufacturers and ancillary service providers.

In 2023 international space consultancy firm Euroconsult forecasted Australian spaceport operators could supply between 45 and 95 space launches over the decade to 2032 with a value of between $460 million and $1.15 billion. This forecast assumed access to the large United States (US) market through a Technology Safeguards Agreement (TSA).

QUESTION No.: 2

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 6)

Senator FAWCETT: Have you listed out the issues that have been raised by a number of the submitters, and have you prepared responses to those concerns which you will give the committee?
Mr Hewett: We have not prepared a written response on each of those items for the committee.

Senator FAWCETT: So we can either laboriously go through a long list of items from a number of submitters—Piston Labs, ELA; I know Mr Jones is here and others who have raised concerns today—or you can take it on notice. But if you take it on notice, the intent of the committee would be that you provide answers in detail to the concerns that have been raised. If you're happy to give us an undertaking that you will answer any of us detail as requested, I'm happy to put those on notice. If not, we can spend quite a bit of time, Chair permitting, to run through each of those items that are now listed.

Mr Hewett: Our analysis of the submissions indicated that most were concerned about implementation. For that reason, Mr De Luis is with us. He is the responsible officer for implementing, and you're welcome, of course, to put direct questions to him.

Senator FAWCETT: What I would prefer to do in the interests of time is direct you to those submissions which have concerns raised. Some are embedded in their text but most break them out against particular paragraphs that are in the TSA. Can I ask you to take on notice providing to us a rationale for why the TSA doesn't actually generate the concern that's been listed by submitters, or an indication that perhaps you will suggest an amendment that should be made to the TSA in our recommendations in our report. We may then have a need

to come back to you, but I think that's probably a better starting point than laboriously going through each of them one by one.

CHAIR: I think Senator Fawcett makes a good point. If you take the ELA submission, some raised their questions in greater detail than others in the submissions, but the ELA is a good example that essentially poses bullet point form queries in relation to particular parts of the TSA.

If, understandably, Mr De Luis has already begun the process of sort of assembling some sort of response to those it would be helpful if that could be provided to the committee. It may well be that, for instance, there are five or six bullet points in relation to paragraph 4. I don't think the expectation is that you will necessarily answer each and every bullet point because in some cases you might be able to make a general response that answers several of them at the same time. But I think Senator Fawcett is quite right. We can either go through and pull out all the bits we'd like you to answer here, now, or we could do this subsequently, but if you're happy to give us an undertaking that you'll provide your response to those things to us in writing, I think that would be helpful for our reporting purposes.

Mr De Luis: Thank you. I'm happy to do that.

ANSWER

The Australian Space Agency notes the Committee received nine public submissions.

All public submissions are supportive of bringing the TSA into effect, as drafted. The submissions primarily sought further clarity on how technical aspects of the TSA will be implemented.

Table 1 provides a response to clarifications sought. In the interest of brevity, similar clarifications are grouped together. There are a total of 20 clarifications.

Where policy recommendations have been made, the Australian Space Agency notes that these are outside the scope of the TSA.

QUESTION No.: 3

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 7)

Senator FAWCETT: Have you identified at this stage who the stakeholders are that you would include in that co-design process?

Mr De Luis: At the moment, to be honest, I'm focusing more on that second pathway, which is particular applicants and particular Australian proponents. But we will circle back. As I said, the sector-wide thing will be a little bit generic in its nature, and the utility of it may not be as good as doing an actual workshop with an actual applicant. We're trying to run both at the same time.

Senator FAWCETT: What you do then get, though, with a true co-design process is at least the left and right of arc or parameters that these things are generally good for us or these things would be harmful, which then guides how you work with the case by case.

On notice, I'd like an idea of who you are planning to involve in that first path and what timeframe you're looking at. Then, with the Chair's concurrence, I would be looking for the report to be requiring a comeback from you to the committee with feedback on where that process has got to, in accordance with the timeframes you've laid out.

ANSWER

The Australian Space Agency has established dedicated Technology Safeguards personnel within the Office of the Space Regulator to oversee implementation of the TSA. This team will engage with the sector to clarify issues, seek feedback on the implementation approach and publish guidance material.

The Office of the Space Regulator will work with individual Australian applicants including their US clients to clarify the specific security requirements of the Government of the United States for the activity proposed in order to protect the US space launch technology involved. These requirements will be reflected in and managed under the Australian authorisation provided under the *Space (Launches and Returns) Act 2018*.

QUESTION No.: 4

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 8)

Senator FAWCETT: It's a hot topic—what's on their excluded list as part of these regulations. Otherwise, our whole GWEO, guided weapons and explosive ordnance, plans start to fall over. So that's something that, from a defence perspective, we're pushing very hard. That's why I'm interested to understand whether this allows the US to essentially ignore what AUKUS and the DTCA revisions are putting in place and run their own control or whether this will be subject to the permissions that have been granted under the subordinate regulations to the DTCA. You can take that on notice, if you don't know offhand, but that's an important question.

Dr Robinson: Chris, I'm happy to give a general answer to that unless you have something to offer. As Chris Hewett advised, we've been working closely with our Defence colleagues on the consultations on the amendments to the DTC Act and the US export control reforms. It's important to note that the TSA operates separately to those export control processes. Export control licences and permits, to the extent that they are still required, will still be required or not required as the case may be with the TSA. It doesn't cover or guide the export control process. It's a separate framework to that. As Chris alluded to, under the current excluded technologies list it seems to be that a number of MTCR related technologies will remain on that list, which means they will still need relevant export control licences to come to Australia. The TSA then sets out how those technologies will be protected in Australia once they're here. Similarly with other technologies that don't require an export control licence, the TSA may or may not regulate those items depending on the nature of the technology and the controls that the US puts on those sorts of technologies.

Senator FAWCETT: That still doesn't specifically answer my question. Can I ask you to take on notice then, if a case comes up where the launch is of a technology which is clearly covered by the regulations subsequent to DTCA reforms under AUKUS, whether the State Department has the freedom to go, 'We're going to treat this as an individual case and put our own restraints on it,' or whether the TSA will be subject to the new environment that's created. Because, otherwise, we end up with a double burden for Australian industry. Could you take that on notice, please.

ANSWER

The AUKUS partners have made significant progress to deliver on the commitment to create an innovative ecosystem that supports our shared interests and deepens our defence and security cooperation.

The TSA will not impact the space sector's ability to benefit from the proposed export licence-free environment. The TSA complements the proposed licence-free environment by

enabling US launch activities to take place in Australia with all the benefits that will flow from this, further expanding the Australian space sector.

The US has proposed a carve-out of most of the Missile Technology Control Regime (MTCR) related technologies from the export licence-free environment with Australia. These space related technologies broadly cover rocket systems and associated technologies. The carve-out of the MTCR related technologies is consistent with long-standing non-proliferation policy to prevent the development and sharing of systems capable of delivering weapons of mass destruction.

The carve-out means the status quo for Australian industry is retained regarding technology transfer of these items. This means that US export licences will still be required for the transfer of most MTCR related technologies to Australia however these items will benefit from expedited processing.

US export control licences for technology transfer operate and apply outside of the TSA framework.

QUESTION No.: 5

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 8)

Senator FAWCETT: The SAMS Act, Safeguarding Australia's Military Secrets, has quite extensive requirements around the employment of people who may have a background in the military. Are the provisions of SAMS or anything equivalent going to be applied to the providers of launch and recovery operations here—which would impact on who they can employ and whether they need to ask for permission—given that we may be interfacing with US government technology?

Mr Hewett: I think we'll take that one on notice as well.

Senator FAWCETT: Thank you.

ANSWER

The Safeguarding Australia's Military Secrets (SAMS) legislation prevents people with sensitive Defence knowledge from training or working for some foreign governments and military organisations.

The United States is not a relevant foreign country for the purposes of the SAMS Act. As such US space launch activities occurring under the TSA (TSA) would not require a Foreign Work Authorisation.

If however, an Australian citizen or permanent resident, on behalf of a relevant foreign country for the purposes of the SAMS Act, were to launch US satellites from Australia for a country (beneficiary) other than the United States, United Kingdom, Canada or New Zealand, this would be in scope of the TSA. Subject to the individual's previous employment (if a former Defence staff member) or if the item being launched is referenced in the Defence and Strategic Goods List Part 1, the individual may be required to obtain a Foreign Work Authorisation under the SAMS Act (Defence Act Part IXAA).

QUESTION No.: 6

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 9-10)

Senator FAWCETT: Before we go to Mr De Luis: consultation is a wonderful thing. It's often one way, as opposed to truly engaging. Are you able to table for the committee the agenda items of, perhaps, the last half-dozen meetings you've had with the environment department so that we can see where you have consistently raised the fact that they are not meeting commercially realistic timeframes for an applicant who has followed a process that we have collectively put in place, which is actually undermining the very outcome that this TSA seeks to achieve? I would be interested to know—press to test—that your consultation is actually a focused, recurrent process trying to drive another department to meet a whole-of-government outcome, as opposed to allowing their process to derail something that the rest of us are trying to achieve.

[Continued below]

Senator FAWCETT: I would like to clarify a question on notice, then. The first part of that whole thing was that, in paragraph 4, you're talking about requiring an overseeing entity. If that is a government department, then what are we doing to make sure that that will be a timely thing? If you're not prepared to pursue individual cases, how do you make sure it's timely for an individual case? Generics are useless for a company who's waiting on a contract because some department has decided that they're not going to deal with it this month or next month.

Mr Hewett: We will take that on notice, but I would say that we do work with departments to ensure that we grease the skids, so to speak—not on regulatory decisions but on other issues that might impede a launch. We absolutely work across the Commonwealth to ensure that other departments fully understand the implications of a launch and can support it in their particular ways.

Senator FAWCETT: Could you also take on notice the second part of that question. I'd like to see your agendas, and if you think there's a public interest immunity reason why you shouldn't disclose those, feel free to make a PII claim.

CHAIR: Sorry, what were you after there, Senator? You were after agendas—

Senator FAWCETT: I'm after evidence that, in pursuing something like the TSA and trying to enable our space industry, the government department—who, if you like, is the advocate for our space industry—is giving a nudge to other government departments that are putting roadblocks in their way.

CHAIR: The term 'roadblock' is a loaded one. If you're talking about the department of environment, and someone makes an application to create a facility that raises matters of national environmental significance under the EPBC Act and the department has to go through a proper process of determining that, that in and of itself can't be described as a roadblock. That's a proper Australian regulatory process.

Senator FAWCETT: Yes, but regulatory processes aren't designed to be indefinite. If you want a sector to survive, you need to come back and say no, come back and say, 'Here are specific issues,' or approve it. You don't just leave it for two years with no communication.

CHAIR: I understand. You appear to be talking about a particular circumstance.

Senator FAWCETT: I am, because it's a specific case example that proves the generic. I'm saying that under this TSA we need to put in frameworks that will address the generic. But the best way to prove that the generic is a concern is to highlight the specifics. Here is a specific. I'm interested to understand, in your extant processes, how much you engage with

other departments. That's my question on notice. If the department doesn't want answer it, that's fine, put in a PII claim.

CHAIR: That's not the only way in which they would alert you. You can choose to respond. The senator has quite rightly raise the issue and asked for it to be responded to in a particular way. You can consider that and respond to it in the way that you choose, and we'll see how it goes from there.

ANSWER

The Australian Space Agency works across government through the Space Coordination Committee and associated working groups. At a state and territory level, the Australian Space Agency works through the Senior Space Committee of Australian Governments and the State and Territory Space Coordination Committee.

The Agency, through the Office of the Space Regulator has also initiated collaboration across Commonwealth regulators, for example the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the Civil Aviation Safety Authority (CASA), to streamline regulation of space activity at the federal level and to provide greater clarity to the sector on regulatory requirements. An example of this collaboration is partnering with the Director of Marine Parks to research the impact of rocket bodies landing in marine environments, to provide that regulator with greater confidence when assessing proposals with potential impact on marine parks.

As with any industrial and transport proposal, Australian launch facilities and spaceflight activities are subject to a variety of Commonwealth and state or territory regulations relating to matters such as safety, environment and heritage protection. Whilst it is appropriate for the Australian Space Agency to improve guidance, information sharing and streamlining of regulatory processes, the Australian Space Agency does not advocate to other regulators on behalf of individual commercial developments.

QUESTION No.: 7

REFERENCE: Question on Notice (Hansard, 13 May 2024, Page No. 11)

CHAIR: Perhaps you can come back to us on exactly what does happen in segregated areas. Certainly, if you look at various parts of the agreement it does make it sound as if, other than in exigent circumstances, which are not defined, Australians don't get to go into these areas unless expressly permitted by the United States of America. There can't be too many places in territorial Australia where such an arrangement is reached with a government. It is, to a large degree, a ceding of what would otherwise be the territorial freedoms of Australians. If you look at the preparations at Australian facilities, it says:

The Government of Australia shall not permit Australian Participants access to Segregated Areas and Controlled Areas for any purpose—

for a whole bunch of things—

... unless they are escorted at all times by U.S. Participants or are specially authorized by the Government of the United States of America, unless in exigent circumstances.

So I'd be interested in a bit more detail about how the segregated areas actually operate and also some examples of what exigent circumstances would amount to. I imagine they would amount to law enforcement or national safety or security or other kinds of things where, essentially, Australian emergency responders or law enforcement or whatever would decide that they would need to go there. In which case, all those other requirements wouldn't exist. But please clarify that.

Mr Hewett: We've be happy to.

ANSWER

Segregated Areas

Article II.9 of the TSA defines Segregated Areas as areas jointly designated by the Parties where access is temporarily limited to persons designated by the Government of the United States. The concept of Segregated Areas is common to the other TSA's already in effect.

The intent of a Segregated Area is for protecting and storing sensitive US space launch technology in Australia that allows US persons and other authorised persons, including Australian persons, access to the technology as necessary. In practical terms, this is likely to be a restricted area set-up within the boundaries of an Australian launch facility, such as a fenced off area or within a building. A Segregated Area is not a permanent requirement and only needs to be in place while US space launch technology is on site.

Access to a Segregated Area is designated by the Government of the United States in advance of a Launch Activity and specified in a Technology Transfer Control Plan (TTCP). The TTCP will specify any authorised Australian Participants who need access to the Segregated Area, such as personnel of the Australian launch facility operator, and Australian government authorities who need to carry out their statutory powers, duties and functions.

Article IV.3 establishes that Segregated Areas will also be designated in the Technology Security Plan (TSP) required under the Australian launch permit process. Therefore, Australian launch facility operators will necessarily co-design Segregated Areas at their facilities in close consultation with their US collaborators. The co-design process is reinforced in the definitions of both TTCP and TSP at Article II which notes the plans are developed in consultation between U.S. and Australian Licensees.

Exigent circumstances

Article III.1 states that the agreement does not restrict authorities of the Australian Government and its States and Territories from carrying out their statutory powers, duties and functions under Australian Law. Article VI.7 complements Article III.1 by providing an obligation on the Government of the United States to ensure that Australian Authorities are facilitated access to conduct official duties. The Side Arrangement to the TSA, enclosed with this response, also further clarifies the entry of Australian Authorities into Segregated Areas. For example, Paragraph 6.1 clarifies the intention of U.S. Government to promptly authorise access to Australian Authorities.

The TSA and the Side Arrangement also consider the entry of Australian Authorities in exigent circumstances where no pre-existing authorisation can occur. Exigent circumstances are undefined in the TSA or Side Arrangement to allow for flexibility in their implementation. It is expected to be limited to emergency responders, for example police, fire and ambulance services. Paragraph 6.1 of the Side Arrangement clarifies this intention by including an example of emergency response.

Table 1: Response to clarifications raised in the public submissions.

	Submission Topic	Response
1.	How does the Australian Space Agency intend to engage with the sector to co-design relevant aspects of implementing the Technology Safeguards Agreement? *Six submissions sought clarification on this topic.*	Refer to Question on Notice #3
2.	How does the TSA intersect with the proposed AUKUS technology transfer reforms? *Four submissions sought clarifications on this topic.*	Refer to Question on Notice #4
3.	What is the Australian Space Agency doing to work with other government departments to streamline regulation of space activities and improve approval timeframes? *One submission sought clarification on this topic.*	Refer to Question on Notice #6
4.	Can you explain how Segregated Areas will operate? *Four submissions sought clarification on this topic.*	Refer to Question on Notice #7
5.	What does Article III.2 mean regarding the 'use of funds' and how does it apply to companies? *Three submissions sought clarification on this topic.*	Article III.2 places an obligation on the Government of Australia to not use funds from US Launch Activities for the acquisition, development, production, testing deployment or use of Missile Technology Category I systems. The agreement states the Government of Australia may use such funds for the development and improvement of the Australian space program, and the agreement does not prevent such funds being transferred to the Commonwealth's consolidated revenue fund for distribution across Commonwealth programs. The intention of this article is to prevent the Government of Australia from establishing a direct tax or levy on US Launch Activities and using such funds to directly offset the development of an Australian launch program. The Government of

		Australia does not charge fees for the licencing of space launches and returns in Australia, including for US space launch activities. This Article places an obligation on the Government of Australia and not on private companies. The Government of Australia does not view that funds obtained through commercial transactions by Australian companies involved in Launch Activities under the agreement are in scope of this Article.
6.	Can clarity be provided on Article III.3e? *Three submissions sought clarification on this topic*	Article III.3e applies to a narrow set of circumstances whereby a foreign entity would be launching their Non-U.S. Launch Vehicle from Australia and that launch vehicle would host a U.S. Spacecraft. Under this scenario the Government of Australia must enter into a 'politically binding arrangement' with the foreign government that has jurisdiction and/or control over the foreign entity that would be launching from Australia. In this context, a Memorandum of Understanding (MoU) would be considered a 'politically binding arrangement'. Following entry into force of the TSA, the Australian Space Agency will consider whether politically binding arrangements with other foreign governments should be negotiated. Whether another government would enter into such a politically binding arrangement is a matter for that government.
7.	Who will oversee the exchange of U.S. Technical Data between Australian Participants and non-Australian entities involved in launch activity? *Four submissions sought clarification on this topic*	The Australian Space Agency within the Department of Industry, Science and Resources will be responsible for oversight of exchange of U.S. Technical Data between Australian Participants and non-Australian entities involved in launch activity, as the lead Commonwealth agency with respect to the Technology Safeguards Agreement. This oversight role will be clarified as implementation frameworks and guidance material are further developed.
8.	Can further information be provided about Article III.9 and implementing arrangements? *Four submissions sought clarification on this topic*	Article III.9 refers to the development of (non-legally binding) arrangements that are intended to clarify the operation of the TSA. One such arrangement has already been developed (the Side Arrangement) which provides further clarification on items such as possession of equipment, disclosure and use of information, access controls, border controls and launch anomaly or failure. It is expected the Australian Space Agency would lead on the development of any other such arrangements should they be required. Consultation will depend on the scope and nature of the arrangement being negotiated.

9.	Can clarification be provided to the sector on what is required to meet obligations for Segregated Area and Controlled Area? *Four submissions sought clarification on this topic*	Obligations for Segregated Areas and Controlled Areas will be determined on a case-by-case basis by the Government of the United States and the Government of Australia, in collaboration with the U.S. Licensees and the Australian Licensees for a given Launch Activity. The obligations will be set out in the respective plans required by the governments: the US TTCP and the Australian TSP. Paragraph 10 of the Side Arrangement gives further clarity on how the plans will be developed and finalised. The Australian Space Agency has established dedicated Technology Safeguards personnel that will work through these topics with the sector to provide further guidance.
10.	Can further information be provided about Article V.1 on the 'disclosure and use of certain information'? *Three submissions sought clarification on this topic*	Launch Activities under the TSA will involve the exchange of detailed US technical data with Australian participants relating to the design and operation of U.S. Launch Vehicles and U.S. Spacecraft. This will be necessary to allow for the safe and effective operation of a launch vehicle at an Australian spaceport, including integration of both Foreign and Australian Spacecraft into U.S. Launch Vehicles or the integration of U.S. Spacecraft into Non-U.S. Launch Vehicles. Article V.1 clarifies that any transfer of such data must be specifically authorised by the Government of the United States. Where applicable, such data will be controlled in accordance with relevant US export control frameworks.
11.	Can clarification be provided on how both Governments will handle disputes about the interpretation and implementation of the TSA? *One submission sought clarification on this topic*	Article IX of the TSA covers implementation of the TSA and includes provisions for consultation to maintain the effectiveness of the agreement and also identifies a mechanism for dispute resolution through diplomatic channels. Such provisions are a common feature of treaty-level agreements. The process for consultation between the Parties or dispute resolution has not been specified.
12.	How will the Commonwealth obtain further information from the United States should the information provided under Article III.7 be insufficient? *Two submissions sought clarification on this topic*	Article III.7 refers to Australia's full knowledge and concurrence policy (FK&C). Paragraph 9 of the associated Side Arrangement clarifies that information gathered from the Government of the United States to satisfy Australia's FK&C policy will be gathered as part of the regular licensing and permit process under Australia's *Space (Launches and Returns) Act 2018* (SLR Act).

		Under the SLR Act, the Minister for Industry and Science may take into account the security, defence or international relations of Australia in deciding whether to grant a relevant licence or permit. If information provided by the Government of the United States in relation to Article III.7 is insufficient, the Government of Australia can request additional information to determine whether to approve a Launch Activity consistent with Australian Law.
13.	How will an Australian entity having an associated entity registered in the United States be treated under the TSA? *One submission sought clarification on this topic*	For the purposes of the TSA, an Australian entity having an associated entity registered in the United States are separate entities and would still need to apply for any relevant export control licences before transferring technology to the related Australian entity. In addition, the US entity would be bound by US laws.
14.	Will the Australian Government continue to refine its regulatory approach once the TSA is in force? *Four submissions sought clarification on this topic*	The Australian Space Agency, through the Office of the Space Regulator, adopts a continuous improvement approach to regulation (with stakeholder consultation) through the SLR Act.
15.	Will the Government provide information on how different federal laws interact with the TSA? *One submission sought clarification on this topic*	The Australian Space Agency intends to publish guidance directing spaceflight proponents to a range of Commonwealth regulation that may be relevant to spaceflight activities. We expect this will include regulation relevant to the TSA.
16.	Will an annual review of the implementation of the TSA be conducted? *One submission sought clarification on this topic*	The Australian Space Agency within the Department of Industry, Science and Resources routinely reviews its processes and procedures.
17.	We suggest the Australian Government obtains an exemption for Australia to allow US Government payloads to be launched on Australian rockets. *One submission sought clarification on this topic*	The Australian Space Agency notes that this is outside the scope of the TSA. The Australian Government routinely advocates on behalf of Australian industry in the US.
18.	We suggest some sort of agreement to be put in place with the US Government to enable technology sharing, collaboration and manufacturing in Australia of MTCR Category I technology.	The Australian Space Agency notes that this is outside the scope of the TSA. The Australian Government routinely advocates on behalf of Australian industry in the US.

	One submission sought clarification on this topic	
19.	We suggest establishing an innovation fund or incubator programs to support Australian space startups in developing proprietary technologies in parallel with this agreement. *One submission sought clarification on this topic*	As a technological enabler across the economy, the space sector can help diversify and transform Australian industry and may be eligible for National Reconstruction Fund (NRF) funding through several of the NRF priority areas, including enabling technologies, defence and transport. Smaller companies in the space sector can apply for growth funding and advice under the $392 million Industry Growth Program.
20.	We advocate for the creation of a bilateral working group to oversee the Agreement's implementation. *One submission sought clarification on this topic*	The Australian Space Agency will continue to engage with US counterparts as the agreement is implemented.

Arrangement

between

the Government of Australia

and

the Government of the United States of America

relating to

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

The Government of Australia ("the Australian Government") and the Government of the United States of America ("the U.S. Government") (together, "the Partners") have reached the following understandings regarding 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, signed at Washington on October 26, 2023 (the "Agreement"):

Paragraph 1: Objectives

1. The Australian Government intends to ensure that Australian Authorities collaborate with the relevant agencies of the United States of America in support of the purpose of the Agreement in accordance with this Arrangement, as envisaged in Article III, paragraph 9 of the Agreement.

2. The U.S. Government is expected to authorize the activities described in this Arrangement via U.S. export licenses and other authorizations. Such authorization may be requested by U.S. Licensees in coordination with Australian Licensees, Australian Authorities, or the Australian Government as applicable, prior to Launch Activities, and the authorization is expected to be secured prior to Australian Authorities fulfilling the statutory powers, duties, and functions described in this Arrangement.

Paragraph 2: General Provisions

1. Terms used in this Arrangement are intended to have the same meaning as they have in the Agreement.

2. In addition, for the purposes of this Arrangement:

   (a) "Australian Authorities" include, but are not limited to:

      (i) Airservices Australia,

      (ii) Australian coroners including coroners in Australia exercising statutory functions under Australian State and Territory coroners legislation in Australia,

      (iii) Australian emergency services including State and Territory fire or rescue services, State and Territory ambulance services, and the Australian Maritime Safety Authority,

      (iv) Emergency Management Australia,

      (v) Australian law enforcement authorities including the Australian Federal Police, State and Territory Police, Crime and Corruption Commissions (CCC) and the Australian Border Force,

(vi) Australian work, health and safety authorities including Comcare and State and Territory Work, Health and Safety Regulators and their officials or a person who has a right to enter a workplace under Australian Law,

(vii) State and Territory public health and pandemic response authorities,

(viii) State and Territory radiation authorities,

(ix) State and Territory environmental agencies,

(x) State and Territory road and/or transport agencies,

(xi) the Aboriginal Areas Protection Authority,

(xii) the Australian Civil Aviation Safety Authority,

(xiii) the Australian Defence Force, including the Royal Australian Navy, Australian Army, and the Royal Australian Air Force,

(xiv) the Australian Government Department of Home Affairs,

(xv) the Australian Government Department of Agriculture, Fisheries and Forestry,

(xvi) the Australian Government Department of Defence (including Defence Export Controls),

(xvii) the Australian Government including relevant Ministers and their offices and relevant State and Local Government authorities,

(xviii) the Launch Safety Officer for the launch activity appointed under section 50 of the Australian *Space (Launches and Returns) Act 2018*,

(xix) the Investigator for an accident or incident involving the launch or return of a space object or the launch of a high power rocket appointed under section 88 of the Australian *Space (Launches and Returns) Act 2018*,

(xx) the Australian Radiation Protection and Nuclear Safety Agency,

(xxi) the Australian Signals Directorate,

(xxii) the Australian Space Agency,

(xxiii) the Australian Transport Safety Bureau,

(xxiv) the Defence Flight Safety Bureau, and

(xxv) such other body as the Australian Government may notify in writing to the U.S. Government from time to time;

(b) "statutory powers, duties, and functions" means statutory power, duties, and functions arising under any applicable Australian Law;

(c) "U.S. Technology" means U.S. Launch Vehicles, U.S. Spacecraft, U.S. Related Equipment, components or debris thereof, and/or U.S. Technical Data.

3. Each Partner intends to appoint a liaison officer whom the other Partner may contact to discuss issues concerning this Arrangement.

4. In the event of any conflict between a provision in this Arrangement and the Agreement, the Agreement's provisions are expected to prevail.

5. It is the intention of both Partners, assuming consistency with applicable laws, regulations, policies, and the provisions of the Agreement and this Arrangement, that the determination of any necessary licenses, approvals, and authorizations should be expedited where possible and appropriate guidance should be provided to U.S. Licensees and Australian Licensees when applying for any necessary licenses, approvals and

authorizations where practicable in order to support greater collaboration between the U.S. and Australian space sectors.

Paragraph 3: Identification of countries that have repeatedly provided support for acts of international terrorism

1. For the purposes of Article III, paragraph 3(a)(i), the U.S. Government has designated countries that have repeatedly provided support for acts of international terrorism, as set out in the U.S. Department of State, Bureau of Counter Terrorism "State Sponsors of Terrorism" list available at: https://www.state.gov/state-sponsors-of-terrorism/.

2. The Australian Government intends to prohibit the launch from Australia of Foreign Spacecraft owned or controlled by countries designated by the U.S. Government at the date of the launch as State Sponsors of Terrorism. The Australian Government reserves the option to identify additional countries that have repeatedly provided support for acts of international terrorism.

Paragraph 4: Custody of U.S. Technology and Photographs and Recordings Thereof

1. For the purposes of the activities described in Article III, sub-paragraph 3(c), Article IV, paragraphs 2 and 3, Article V, paragraph 2, Article VII, paragraph 3, and Article VIII, paragraphs 3(c) and 3(d) of the Agreement, the Partners have mutually decided that any of the Australian Authorities may need to take U.S. Technology, and photographs and recordings of U.S. Technology, into secure custody where required for the purposes of fulfilling their statutory powers, duties, and functions (including for any investigation, inspection, prosecution, or in response to an emergency situation, accident, incident or launch anomaly), in accordance with the requirements of any applicable Australian Law.

2. If the need arises for any of the Australian Authorities to take custody of U.S. Technology, or to photograph or record it, the relevant Australian Authority is expected:

(a) to consult in advance wherever possible with the U.S. Government and be accompanied and observed by U.S. Participants, except in exigent circumstances;

(b) to take all practicable steps to safeguard the U.S. Technology, and any photograph or recording thereof, from unauthorized disclosure, consistent with this Arrangement, pending its return to the U.S. Government, in accordance with Australian Law and as soon as practicable; and

(c) wherever possible to provide the U.S. Government with descriptions of the U.S. Technology, and any photograph or recording thereof, and information about the methods of storage and access control when in custody.

3. The Australian Authorities are expected to engage with the relevant agencies of the United States of America with a view to further elaborating safeguards for U.S. Technology taken into custody under this Paragraph, including consideration of whether, and under what circumstances and conditions, it may be held in custody by U.S. officials, with appropriate access for the Australian officials, or where this is not practicable, with appropriate access for U.S. officials when held in custody by Australian officials.

4. At the conclusion of any investigation or court proceeding involving U.S. Technology, or photograph or recording thereof, that has been held in custody by Australian officials, the Australian Authorities are expected, to the extent permitted by Australian Law, to take all possible steps to ensure that any such item is returned or destroyed in such manner as mutually decided by the Partners.

5. In the event of any request for release into the public domain for information about the U.S. Technology, or for a recording or photograph thereof, the Australian Government intends to ensure that the Australian Authorities, subject to their legal obligations, including under any applicable Australian Law on freedom of information, utilize applicable legal grounds that allow such information and items to be withheld from public release and consult with the U.S. Government in this process.

Paragraph 5: Disclosure and Use of Information

1. In relation to Article V, paragraph 1 of the Agreement, and where consistent with the applicable U.S. laws and regulations, the U.S. Government intends to authorize U.S. Participants to provide to the Australian

Authorities any information, or permit access to witnesses, that is necessary to enable the relevant Australian Authorities to fulfil their statutory powers. duties, and functions.

2. Subject to Australian Law, the Australian Government intends to ensure that the Australian Authorities supplied with any information under sub-paragraph I of this Paragraph should use this only for the purposes of fulfilling their statutory powers, duties, and functions, and the Australian Authorities:

(a) take all practicable steps to protect the confidentiality and integrity of such information; and

(b) comply with Article V, paragraph 4 of the Agreement, if any of the information is classified.

Paragraph 6: Access Controls

1. Where the Agreement requires that only persons authorized by the U.S. Government may control access to an area or to U.S. Technology, and any of the Australian Authorities need access to that area or that U.S. Technology to fulfil their statutory powers, duties, and functions, the U.S. Government intends to provide the necessary authorization under U.S. law to allow the U.S. authorized person who controls such access to promptly grant to the relevant Australian Authority that access where consistent with applicable U.S. laws and regulations. In the event of exigent circumstances, such as emergency response, Australian Authorities may enter Segregated Areas and Controlled Areas to fulfil their statutory powers, duties and functions.

2. The Australian Authorities are expected to take all practicable steps to comply with U.S. licenses and authorizations and to protect U.S. Technology from unauthorized disclosure, including the following:

(a) appropriately brief any of their officials who have access to Segregated Areas and Controlled Areas on the requirements to protect U.S. Technology;

(b) ensure that, unless exigent circumstances arise, U.S. Participants are present during the period of access by the Australian Authorities; and

(c) follow the procedures in Paragraph 3 of this Arrangement if the Australian Authorities need to photograph, record, or take custody of any U.S. Technology for the purpose of fulfilling their statutory powers, duties, and functions.

3. The Australian Authorities are expected to make available upon request, and where permitted by Australian Law, processes and procedures required to fulfil their statutory powers, duties, and functions, including where their statutory powers, duties, and functions are likely to be fulfilled in Segregated Areas and Controlled Areas.

4. The U.S. Government intends to provide the necessary authorization for the Launch Safety Officer to access Segregated Areas in order to fulfil their statutory powers, duties, and functions under the *Space (Launches and Returns) Act 2018* as part of the U.S. licensing and authorization process.

5. The U.S. Government intends, except in exceptional circumstances, to promptly notify the Australian Government when U.S. Participants are authorized by the U.S. Government to access Segregated Areas in order to align security frameworks.

6. For the purposes of Article VI, paragraph 6, identification may include badges that display the bearer's name and photograph or other appropriate measures or future technology that allows for ready identification of Participants within Controlled and Segregated areas.

Paragraph 7: Border Controls

1. For the purposes of Article VII, paragraphs l(d) and 1(e) of the Agreement, the U.S. Government is expected to instruct U.S. Participants to comply with relevant Australian Law and requirements for importing and exporting goods to and from Australia and engage with the appropriate Australian Authority responsible for assessment of the control status of items being exported, regarding the required process and procedures in advance of exporting U.S. Technology to Australia.

2. For the purposes of Article VII, paragraph l(b) and (e) of the Agreement, the Partners mutually decide that Australian Authorities may instruct, where permissible, U.S. representatives to open sealed containers containing U.S. Technology for inspection while in Australian territory. In the event of exigent circumstances described in sections 6 and 7 of Paragraph 7, Australian Authorities may open sealed containers to fulfil their

statutory powers, duties, and functions. Where permissible, sealed containers are expected only to be opened where this is necessary for the Australian Authorities to fulfil their statutory powers, duties, and functions in accordance with Australian Law, including:

(a) to prevent the import or export of prohibited or unauthorized goods into or from Australia; and

(b) to prevent and manage biosecurity risks in relation to goods that are brought into Australian territory from outside Australian territory.

Further information on Australia's biosecurity requirements including inspections, treatments, and responsibilities can be found at: https://www.biosecurity.gov.au/.

3. The Australian Authorities are expected to make available upon request, and where permitted, processes and procedures used to fulfil their statutory powers, duties, and functions and to provide a point of contact to discuss the processes and procedures in order to enable appropriate planning and consideration in applications for any necessary licenses, approvals, and authorizations.

4. For the purposes of Article IV, subparagraphs 5(b) and 6(b), Australian Authorities are expected to exercise any necessary statutory powers, duties, and functions required under Australian Law in facilitating the return of U.S. Launch Vehicles, U.S. Spacecraft, U.S. Related Equipment, and/or U.S. Technical Data. For example, if any item of U.S. Technology is being returned to the United States of America because of launch failure or because the item is surplus to requirements, the Australian Authorities may need to carry out inspections and/or supply the item or information, including photographs or recordings of the item, to the appropriate Australian Authority to assess the control status of the items being exported.

5. For the purposes of Article VII, paragraph 3, of the Agreement, in order to facilitate the immediate return of U.S. Technology through the use of the appropriate Australian granted export permits, Australian Authorities may need to fulfil their statutory powers, duties, and functions under any relevant sections of Australian Law such as carrying out inspections and investigations prior to export and to ensure compliance with the use and conditions of those permits.

6. In carrying out any inspection under this Paragraph, the Australian Authorities are expected to take all practicable steps to comply with all applicable U.S. licenses or authorizations and to protect U.S. Technology from unauthorized disclosure, subject to Australian Law and procedures, including the following:

(a) providing reasonable prior notice where possible to the U.S. Government;

(b) inspecting in the presence of U.S. Participants, unless in exigent circumstances;

(c) inspecting by means of visual and/or the least intrusive methods to avoid and minimize damage;

(d) taking into account the necessity of maintaining the physical integrity of sealed containers and their contents, particularly those that are clearly labelled with handling requirements and sealed and certified as to the necessary levels of cleanliness for space activity;

(e) ensuring that transportation containers are opened by a U.S. Participant in the presence of Australian Authorities, unless in exigent circumstances;

(f) acting in a timely fashion;

(g) using officials who have been appropriately briefed on the requirements to protect the U.S. Technology from unauthorized disclosure;

(h) ensuring that, if an inspection is carried out under this Paragraph without a U.S. Participant being present, the Australian Authority that carries out the inspection notifies the U.S. Government that it has done so, provides a briefing, and provides an official contact with whom the U.S. Government may discuss any concerns; and

(i) adhering to the procedures in Paragraph 4 of this Arrangement if the Australian Authorities need to photograph, record, or take custody of any U.S. Technology for the purpose of fulfilling their statutory powers, duties, and functions.

7. Notwithstanding sub-paragraph 6 of this Paragraph, the Australian Government intends to ensure that any item with a classified marking should not be opened by Australian Authorities unless the U.S. Government has provided prior written authorization, unless in exigent circumstances. If an item has a classified marking, the

U.S. Government intends to provide advanced notice to the Australian Government of the level of classification so that the appropriate Australian Government point of contact can provide advice on compliance with legislative requirements and appropriate procedures and processes for border inspection. Border inspections of U.S. classified material are subject to the provisions of the Agreement between the Government of Australia and the Government of the United States of America Concerning Security Measures for the Protection of Classified Information, signed at Canberra on June 25, 2002, with exchange of notes, and entered into force on November 7, 2002, as amended.

Paragraph 8: Launch Anomaly or Failure

1. In relation to Article VIII, paragraph 3 of the Agreement, the Partners mutually decide that the appropriate Australian Authorities, in the fulfilment of their statutory powers, duties, and functions, with input from U.S. Participants, may be required to:

(a) take part in or lead the recovery of U.S. Technology resulting from an accident, incident, or launch anomaly;

(b) seize, keep, photograph, or record in any format such U.S. Technology until the completion of the investigation into the accident, incident, or launch anomaly;

(c) carry out any process or test and examine such U.S. Technology, to the extent necessary and specifically authorized by the U.S. Government for the purposes of such an investigation;

(d) dismantle or destroy such U.S. Technology while observed by U.S. Participants, to the extent necessary and specifically authorized by the U.S. Government for the purposes of such an investigation;

(e) retain such U.S. Technology (to the extent it has not been destroyed) for the purposes of any proceedings resulting from the investigation or associated with the accident, incident, or launch completion of such proceedings, including any appellate proceedings; and

(f) request U.S. Participants and Australian Participants to answer questions in relation to the launch anomaly or failure.

2. The Australian Authorities are expected to adhere to the procedures in Paragraph 4 of this Arrangement if they need to photograph, record, or take custody of any U.S. Technology for the purpose of fulfilling their statutory powers, duties, and functions.

3. In the event of launch anomaly or failure the Partners may mutually decide that certain aspects of the custody, disclosure, and access control requirements outlined in this Arrangement should not apply where they substantially inhibit recovery efforts.

Paragraph 9: Full Knowledge and Concurrence

1. The Partners understand that Launch Activities occurring in, from or through the territory of Australia under the Agreement are subject to the full knowledge and concurrence (FK&C) policy of the Government of Australia.

2. For the purposes of Article III, paragraph 7 of the Agreement, as part of the Australian Government's process for approving relevant licenses and permits required to conduct Launch Activities as authorized under the Space (Launches and Returns) Act 2018, the Australian Government intends to request information from the U.S. Government on the purposes and outcomes of a Launch Activity consistent with Australia's FK&C policy.

Paragraph 10: Plans for Safeguarding Technology

1. In relation to Article IV, paragraphs 4, 5, 6 and 7, Article IV, paragraph 3, and Article VI, paragraphs 1 and 3 of the Agreement, the Partners intend to assess and approve their respective plans developed by prospective Licensees for safeguarding technology in relation to Launch Activities: the U.S. Technology Transfer Control Plan and the Australian Technology Security Plan. These plans are expected to form part of the assurances required in the Agreement for the safeguarding of U.S. Technology and are expected to be enforceable through applicable laws and regulations.

2. The Partners intend to instruct U.S. Participants and Australian Participants to contact the relevant Australian Authorities ahead of the proposed Launch Activity to enable appropriate planning and compliance with legislative requirements including any necessary licenses, approvals, and authorizations.

3. Where possible, the Partners intend to provide guidance to prospective Licensees to develop the respective plans which may include publicly available guidance materials and case-by-case guidance as appropriate.

4. Consistent with any guidance provided, in assessing the plans, the Partners intend to give consideration to a range of factors to ensure that the plans are adequate and proportionate to the level of sensitive technology involved. This includes but is not limited to:

(a) the security arrangements proposed to protect sensitive technology involved in Launch Activities for the duration of the Launch Activity, including for Segregated Areas and Controlled Areas and the proposed activities in each of these areas, and including in the event of a launch anomaly or failure; and

(b) the access and control requirements, including where it is impractical to maintain a physical presence.

5. The Partners intend to instruct U.S. Participants and Australian Participants to work collaboratively in developing their respective plans to ensure the plans are in alignment before being considered by the Partners through their respective assessment and approval processes. This includes sharing a copy of their respective plans with the other Partner where possible.

6. Where permissible, the Partners intend to authorize the sharing of the respective plans with U.S. and Australian officials in order to facilitate the fulfilment of their statutory powers, duties, and functions. Disclosure and use of information contained in the plans is expected to be in accordance with paragraph 4 of this Arrangement and with regard to any commercial in confidence or classified information.

Paragraph 11: Procedures for Certain Communications

1. For the purposes of activities described in the Agreement, and this Arrangement, the Partners have mutually decided the following procedures:

(a) with regard to items requiring written statements, written assurances, notifications, or notices, the relevant point of contact for each Partner should provide the written statement, written assurance, notification, or notice to the other Partner's point of contact. A notification of receipt should be returned; and

(b) with regards to items requiring the Partners to mutually determine, decide, approve, or authorize, the relevant point of contact should communicate approved positions in writing to the other Partner's point of contact. A notification of receipt and approval should be returned.

Points of contact	
For the Australian Government TSA@space.gov.au	For the U.S. Government MTEC@state.gov

Paragraph 12: Operation, Duration, Modification, and Discontinuation of this Arrangement

1. This Arrangement is intended to come into operation on the same date as the Agreement enters into force.

2. This Arrangement may be modified in writing as mutually determined by the Partners.

3. This Arrangement is intended to cease on the same date as the Agreement terminates based on a written notification to terminate the Agreement. In relation to Article X, paragraph 4 of the Agreement, the Partners intend for the provisions set out in this Arrangement concerning security, disclosure and use of information, and return of U.S. Technology to continue to apply after the discontinuation of the Arrangement. This Arrangement may be replaced by a subsequent Arrangement or discontinued earlier by either Partner. A Partner who wishes

to discontinue this Arrangement is expected to give one year's written notice of its intent to do so to the other Partner, or as soon as practicable.

Signed in duplicate at THE AUSTRALIAN EMBASSY WASHINGTON DC on 15 FEBRUARY, 2024, in the English language.

For the Government of Australia	For the Government of the United States of America
[redacted]	
H.E. The Hon. Dr. Kevin Rudd AC Australian Ambassador to the United States	C.S. Eliot Kang Assistant Secretary International Security and Nonproliferation U.S. Department of State