



Space Law Council
Australia and New Zealand



SPACE LAW COUNCIL OF AUSTRALIA AND NEW ZEALAND LIMITED

SUBMISSION

INQUIRY INTO DEVELOPING AUSTRALIA'S
SPACE INDUSTRY

JANUARY 2021

Space Law Council of Australia and New Zealand ("**SLC-ANZ**") is a not-for-profit established to be a hub of ideas and promote the exchange of professional discussion between the law and the issues that arise though of the use of outer space, development of new space technologies and the importance of appropriate legal frameworks.

The SLC-ANZ was established in August 2020 to promote education of space law and policy issues in Australia and New Zealand and serve as a professional network for legal practitioners, academics, students, industry participants and others with an interest in space law and policy issues.

The SLC-ANZ is the successor of the body previously known as the Australia and New Zealand Space Law Interest Group (ANZSLIG) which has been active since the beginning of 2018. The SLC-ANZ has nearly 150 members from across both Australia and New Zealand. The SLC-ANZ regularly hosts seminars and produces materials for the benefit of its members and the general public.

The SLC-ANZ has three core objects:

- advance education on the law and policy issues associated with space activities;
- promote understanding of, accessibility to, and education of space law (both international and domestic); and
- advocate for the creation and reform of laws in Australia and New Zealand that encourage responsible, sustainable and internationally lawful operations in outer space.

About Us

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Executive Summary

The SLC-ANZ thanks the Standing Committee on Industry, Innovation, Science and Resources ("**the Committee**") for the opportunity to make a submission to its inquiry into the development of the Australian space industry ("**Inquiry**").

As set out in the 'About Us' section of this submission, one of the SLC-ANZ's core objects is to advocate for the creation and reform of laws in Australia and New Zealand that encourage responsible, sustainable and internationally lawful operations in outer space. The space industry has quickly become an area of great significance for Australia and New Zealand and we hope that this Inquiry can build on the innovative and progressive work of the space industry in both jurisdictions.

The SLC-ANZ makes four principal submissions:

- there is a need for broader recognition, acceptance and promotion of space industry-related and space industry-adjacent sectors;

- there should be continued focus and support for small to medium businesses;
- the Australian Government should further develop and support the industry regulator's role; and
- the Australian Government should instigate the reform and continued evolution of legal frameworks.

The SLC-ANZ is of the view that these principal submissions all relate to the Committee's terms of reference for the Inquiry, most notably that related to commercialisation of research and development, future research capacity, workforce development and job creation, and other matters related to the space industry.

These submissions are discussed in more detail below.

Should you wish to contact us for further information regarding the SLC-ANZ or this submission, please contact the Company Secretary at secretary@spacelawcouncilanz.com.

The Space Law Council of Australia and New Zealand would like to thank its members for their contributions to this submission. The Space Law Council of Australia and New Zealand would like to especially thank Duncan Blake, Joel Lisk, Sasha Bellamy, John Lee, Michael Spencer, Dr Maria Pozza, Joann Yap and Anne English for their assistance in preparing this document.

01. BROADER RECOGNITION, ACCEPTANCE AND PROMOTION OF SPACE INDUSTRY-RELATED AND SPACE INDUSTRY-ADJACENT INDUSTRY SECTORS

The space industry in Australia and internationally is reliant on a range of voices across a variety of science, technology, engineering and mathematics (traditionally, "**STEM**") sectors, as well as other sectors such as law, finance, insurance, economics and advisory services.

Those sectors not necessarily 'on the ground', including law, finance, insurance, economics and advisory, play an essential role furthering the space industry as a whole. While these space industry-related or -adjacent sectors play a role in facilitating the growth of the space industry by providing timely legal, business and financial advice, they are not commonly associated with the space industry directly.

At present, the space industry-related business sectors described above are far from the key focus of industry initiatives. The SLC-ANZ submits that there is a continuing need to promote and recognise space industry-related or -adjacent industry sectors. Focusing on these sectors will ensure that those entities are at the core of the space industry – e.g. those engaging in international relationships, managing intellectual property ownership, managing compliances with export controls, manufacturing rockets or satellite components, those operating orbital space assets and ground-based space infrastructure – are protected from unnecessary legal, business and financial risks arising out of a lack of understanding or advice.

The SLC-ANZ submits that a strong space-adjacent business sector can also play a substantial role in attracting overseas businesses to the Australian jurisdiction. This will result in substantial indirect impacts for the Australian and partnered economies while also increasing the relevance of the space industry for a broader range of industry sectors and the current and future Australian workforce. This will also place Australia as a full-spectrum space industry services provider, a marker for maturity for national space economies.



02. CONTINUED FOCUS AN SUPPORT FOR SMALL TO MEDIUM BUSINESSES

Small-to-medium sized enterprises (“SMEs”) play an essential role in the growth and development of the Australian space industry. In the main, elimination of regulatory burdens and the provision of targeted support can allow Australian SMEs in the space-sector to flourish domestically and internationally. SMEs have an immense capacity to inspire Australian’s to consider outer space as a viable and worthwhile venture for investment – be it the development of new propulsion technologies, hybrid rocket vehicles, manufacture of small satellites or construction of domestic launching facilities, and lead to solidifying an Australian sovereign space capacity.

The SLC-ANZ makes four submissions on this topic.

Regulatory efficiency is essential

The Australian Government should take steps to ensure that applications received by space industry participants (in respect of any regulatory regime) are processed in an expeditious manner. Many SMEs operate on condensed timelines and respond quickly to the needs of industry or their customers due to limited financial lifespans. Ensuring that regulators are able to effectively respond to the needs of SMEs is essential – regulatory delays can impact on momentum and stifle innovation and activities before they begin.

Reduction of costs for business and increased ease of access to capital and tax incentives

The Australian Government should undertake analysis of its approach to industry regulation and cost impositions to relieve space industry (and other start-up or small industry) participants of substantial cost burdens during early-stage operations.

The SLC-ANZ submits that the Australian Government should consider:

- Creation of special-purpose and industry specific research and development company types subject to reduced or deferred corporate taxes, reduced incorporation fees, and higher insolvency thresholds to encourage Australian innovation and risk taking in research and development.
- Relaxation of the thresholds for tax concessions associated with investments in early-stage innovation companies to allow ongoing investments in research and development companies.
- With respect to activities under the *Space (Launches and Returns) Act 2018*, licensing fees should not be imposed on a cost-recovery basis until the industry has reached a mature level. High-cost fees imposed on a nascent space industry will act as an immediate disincentive to its continued growth and development in favour of jurisdictions with lower or no costs.

Capacity to respond quickly to new industry demands and new technologies

Government should invest in ensuring it is capable of responding to changes in industry focus and activities rapidly and seamlessly. Regulation, across all sectors (not just directly applicable ‘space’ legislation) should be responsive and, where applicable, performance-based (as opposed to prescriptive) to allow new technologies and developments to be compatible with existing regulatory frameworks without the need for wholesale reform.

Remove barriers for entry into government markets

The Australian Government is a significant customer of commercial space companies. The Department of Defence alone has committed to investing AUD\$7 Billion over the next 10 years through the 2020 Defence Strategic Update and

2020 Force Structure Plan. Australian Government Agencies as purchasers of space technologies are in a unique position to open the market to the local space industry suppliers. The Commonwealth Procurement Rules ("**CPRs**"), whilst guiding procurement processes for goods and services and ensuring value for money outcomes, can sometimes have unintended consequences that present a barrier for entry into the market for small to medium enterprises and for new or emerging industries. The CPRs should be reviewed through the lens of how they may impact Australian space industries specifically.

We note that the CPRs were recently updated to mandate that officials must consider the economic benefit to the Australian economy, and relevant non-financial costs and benefits including, for example; environmental sustainability, and environmental impact. It would be easy to clarify the CPRs to make it mandatory when procuring space goods and services to assess sustainability of the space environment, and how the procurement will provide economic benefit to the Australian economy. This is likely to result in the integration of sustainability measures in space technology development, and support a culture where sustainability is at the core.

The Australian Space Agency should consider resourcing points of contact that have specific space industry expertise to provide Business Advisers (for example similar to the Centre for Defence Industry Capability Business Adviser roles) for government customers. The Australian Space Agency could also support new space industry participants with navigating the CPR's when they are participating in government procurements for space goods and services.

Existing Commonwealth contracting suites are also unlikely to be fit for purpose which disadvantages small to medium businesses and new entrants into the government market as it takes time and resources to negotiate suitable terms and conditions. The Australian Space Agency should work with industry and lawyers to draft a suite of appropriate contracts based on common types of space goods and services that government departments are procuring.

In addition to dedicated points of contact, the Australian Space Agency should consider supporting strategic policy institutes to provide Strategic Space Business Advisers and advice to promote strategic thinking on the Australian uses and dependencies on space and support government customers in understanding and embracing space advantages into their policy and strategy development, including managing international strategic relationships.

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03. DEVELOP AND SUPPORT THE REGULATOR'S ROLE

We note that in recent times there has been substantive criticism of the Australian Space Agency in how it has been approving and processing applications under the *Space (Launches and Returns) Act 2018* (Cth). The SLC-ANZ submits that a well-funded, competent and efficient regulator plays an essential role in the development and maintenance of an Australian space industry while also bolstering Australia's international reputation as a good place to do business.

To this end, the SLC-ANZ makes four submissions associated with the structure and operation of the Australian Space Agency.

Funding and Support of the Australian Space Agency

The Australian Government should provide continued and adequate funding to the Australian Space Agency to enable it to effectively and efficiently process applications under the *Space (Launches and Returns) Act 2018* (Cth) as well as continue its successful industry engagement and promotion activities.

In addition to continued funding, the Australian Space Agency should develop a specific strategy to attract and retain the best talents to the Agency to further solidify its role as an essential aspect of the Australian space industry.

Separation of Functions and Capacities

The current co-location of industry promotion and advocacy, and industry regulation within the same entity presents the potential for conflicts of interest or direction. The SLC-ANZ submits that the Australian Government must consider long term arrangements for the Australian Space Agency's structure that reduces any potential risk.

A joint advocacy, promotion and regulatory model for space agencies is not unprecedented, with the New Zealand and United Kingdom space agencies using this model. Despite the respective successes of these agencies, the UK recently indicated in public documents that it would be removing regulatory supervision from the UK Space Agency in accordance with a 'policy of separating safety regulation from sector promotion to ensure regulation is impartial.' The Australian Government should consider a similar policy. Such an action in Australia is not without precedent, with the separation of the operational and regulatory functions of the Civil Aviation Authority of Australia in 1995 (creating Air Services Australia and the Civil Aviation Safety Authority respectively).

In considering the ongoing structure of the Australian Space Agency, if retaining a single entity structure, the Australian Government should consider parallel Deputy Head positions to supervise the regulatory and industry aspects of the Australian Space Agency's activities. Reporting to the Head of Agency, the creation of these roles will go some way to reducing the risk of conflicts of interest between the divisions of the Agency.

Ongoing Agency Structure

Further to our above submissions, the SLC-ANZ submits that the Australian Government should remove the Australian Space Agency from the Department of Industry, Science, Energy and Resources to create an independent body with a statutory basis that is suitably resourced to continue operating

Guidance documentation

The Australian Government should make the creation of regulatory guidance documents a priority of the Australian Space Agency. Such guidance provides substantive and low-cost support to participants in the Australian space industry. Publicly accessible regulatory guidance is common-place and provides invaluable insights in jurisdictions including the United States, UK, Japan and New Zealand. Guidance documents released by a regulator have the capacity to reduce legal costs by removing an early stage need to consult lawyers regarding applications under the Space (Launches and Returns) Act 2018.

The SLC-ANZ also encourages the Australian Government and Australian Space Agency to develop comprehensive, plain English and industry accessible summaries and justifications of domestic and international law to promote greater understanding of the law that exists and why it has been created. Such an effort will assist the Australian space industry participants to understand the reasons for regulation.

04. INSTIGATE THE REFORM AND CONTINUED EVOLUTION OF LEGAL FRAMEWORKS

Laws provide businesses with frameworks to operate within, provide comfort and certainty to financiers and investors, and can aid in making a jurisdiction attractive to foreign operators. With respect to the Australian space industry, a legal framework that enables innovation and allows advanced research and development activities is essential to the longevity of the Australian space industry and making Australia a jurisdiction of choice for international businesses.

The SLC-ANZ makes three submissions regarding legal frameworks.

Reform is essential

The Australian Government made selected amendments to the *Space Activities Act 1998* in 2018 to create the *Space (Launches and Returns) Act 2018*. As was noted in several forums, including the Senate Economics Committee that was assessing the legislation, the reforms were not the wholesale change the industry was seeking. While the Australian Government should be commended for reviewing the *Space Activities Act 1998* and instigating changes, the Australian Government should adopt a new, ambitious approach to regulating the space industry, looking to the future to ensure that future operations are accommodated while (insofar as possible) looking to harmonise the Australian legal framework with that of mature and upcoming markets, including the United States, the United Kingdom and New Zealand.

Having a future-looking legal regime will not only further enable the Australian space industry to grow and mature, but also attract international attention and investment.

International law

International law plays an essential role in the regulation of outer space activities, placing a downward pressure on nations to ensure activities are conducted in a safe, responsible and internationally lawful manner. To further develop the Australian space industry, the Australian Government should continue to participate in international forums to clarify how international law impacts private activities in outer space, while also seeking to develop enforceable and internationally agreed norms of behaviour. This includes the adoption and implementation of the United Nations Committee on the Peaceful Uses of Outer Space's Long-term Sustainability of Outer Space Activities. These actions will further contribute to a stable domain for private activities to take place in.

The Australian Government should also consider its position on space resource exploitation by private entities as a matter of urgency. Such an action would follow in the footsteps of nations such as the United States, Luxembourg and the United Arab Emirates who have confirmed the ability for private entities to exploit space resources. Specifically, the Australian Government should take steps to publicly clarify how it reconciles its obligations under Article II of the 1969 *Outer Space Treaty* and Article 11 of the 1984 *Moon Agreement* and its adherence to the 2020 *Artemis Accords*.

Standards creation

The Australian Government should take an active role in the development and promotion of industry-developed standards capable of satisfying regulatory requirements under Australian and foreign laws. With several nations rapidly transitioning to performance-based standards for domestic space-related legislation, Australia should play a central role in fostering the development of internationally accepted technical standards to further harmonise the regulatory process across jurisdictions with mature and emerging space industries and ensure long term interoperability of technologies current and emerging. Such an action will support Australian industries in marketing products in both domestic and international markets.





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