



COPY

**The Hon Stephen Smith MP  
Minister for Defence**

Senator Ursula Stephens  
Chair  
Senate Standing Committee on  
Foreign Affairs, Defence and Trade  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600



*Ursula*

Dear Senator Stephens

***Inquiry into the Defence Trade Controls Bill 2011***

Please find enclosed two briefing papers prepared by the Department of Defence that may assist the Committee in its Inquiry into the *Defence Trade Controls Bill 2011*.

The first briefing paper is an update on the process of consultation Defence is pursuing with the University sector.

The second briefing paper discusses the implications for the Bill of proposed changes to the United States International Trade in Arms Regulations.

I would be pleased if you could draw these documents to the attention of your Committee members.

Yours sincerely

Stephen Smith

## **DEFENCE TRADE CONTROLS BILL 2011**

### **CONSULTATION WITH UNIVERSITY, RESEARCH AND DEFENCE INDUSTRY SECTORS**

#### **Background**

The Defence Trade Controls Bill 2011 (the Bill) was introduced into Parliament on 2 November 2011. The Bill introduces new export control measures that are essential to close identified gaps in Australia's current export control system. Once enacted, it will align Australia's export controls with the accepted best practice of the international export control regimes to which Australia belongs. The Bill also introduces measures to implement the Australia-United States Defense Trade Cooperation Treaty.

On 21 November 2011, the Bill was passed by the House of Representatives and prior to that had been referred to the Senate Standing Committees on Foreign Affairs, Defence and Trade (the Committee) on 10 November 2011. The Committee was due to report to the Senate by 12 April 2012 but this reporting date has now been deferred to 15 August 2012.

The Committee undertook a public consultation in February 2012 and received 11 submissions. In response to issues that were raised in the submissions, the Committee held two public hearings on 2 March 2012 and 21 March 2012.

At the second hearing, the Committee asked the Department of Defence to undertake further consultation to address concerns raised by Universities Australia and the University of Sydney.

#### **Consultation Progress**

Since the public hearing on 21 March 2012, Defence has held a number of discussions with Universities Australia and the University of Sydney and developed a Principles and Options Paper to help focus consultation on the strengthened export control aspects of the Bill.

Defence has emphasised that acceptance of any changes is a matter for Government consideration following the consultative process.

Defence has also conducted consultations and sought comment from the research sector and research-oriented government agencies, including research-related regulators. A full list of participants in this consultation process is provided below.

Noting that any changes that result from these consultations with the academic and research sectors will also affect the industry sector, Defence has also sought comment on the options from the industry members who had provided comment to the Committee on the strengthened export control aspects of the Bill and from the members of the Defence Industry Advisory Panel that has been involved throughout the development of the Bill.

These discussions with university, research and defence industry sectors and other government agencies contributed to the development of the options.

Defence distributed an updated version of the Principles and Options Paper on 1 June 2012. The fourth option was created by Defence after analysis of case study examples highlighted areas of risk in implementing Option Three, which had been the preferred option.

Defence requested feedback on this updated version by 15 June 2012.

### **Participants of the Consultation**

1. Universities Australia
2. University of Sydney
3. University of Technology, Sydney
4. Academy of Technological Sciences and Engineering
5. Australian Radiation Protection and Nuclear Safety Agency
6. Association of Australian Medical Research Institutes
7. Australia's Chief Scientist
8. Australian Academy of Science
9. Science and Technology Australia
10. Office of the Gene Technology Regulator
11. Australian Safeguards and Non-Proliferation Office
12. through Department of Industry, Innovation, Science, Research and Tertiary Education:
  - i. Commonwealth Scientific and Industrial Research Organisation;
  - ii. Australian Research Council;
  - iii. Australian Nuclear Science and Technology Organisation; and
  - iv. Australian Institute of Marine Science
13. through Department of Health and Ageing:
  - i. National Health and Medical Research Council;
  - ii. Public Health Laboratory Network; and
  - iii. Communicable Disease Network Australia
14. through the Australian Industry Group:
  - i. SAAB;
  - ii. Boeing; and
  - iii. Raytheon
15. Members of the Defence Industry Advisory Panel
16. Defence Teaming Centre
17. The Department of Foreign Affairs and Trade
18. Australian Customs and Border Protection Service
19. The Department of the Prime Minister and Cabinet

## **US EXPORT CONTROL REFORM AND THE DEFENCE TRADE CONTROLS BILL 2011**

### **Subject**

Proposed changes to the US International Traffic in Arms Regulations (ITAR) under consideration by the US Congress and any implications for the implementation of the Defence Trade Controls Bill 2011.

### **US Export Control Reform - ITAR**

US Administration has stated its intent to reform ITAR over time according to a set of guiding principles based on four singularities:

- a single export control licensing agency;
- a single control list;
- a single enforcement coordination agency; and
- a single integrated IT system.

Australia and the US are committed to ensuring that joining the Approved Community and operating within the Treaty framework will continue to provide benefit to Community members and remain attractive over existing export control authorisations, including in the context of the reforms underway. We are working closely with our US State Department colleagues in the Treaty Management Board to ensure that the Treaty incorporates the benefits of US export control reform and have received a commitment from the Department of State that the Treaty will always remain beneficial over the ITAR licence regime.

A recent presentation to Australian companies by a senior US Department of State official noted the key benefits of the Treaty exemption over standard ITAR are:

- the Treaty is here now, whereas many of the ITAR reforms under consideration may take many years to come into effect;
- Approved Community members can use the Treaty exemption without a need to apply and wait for approval – this is important when it comes to bidding on contracts;
- Approved Community members will know the scope and all the conditions upfront, so they can better structure bids/contracts;
- Treaty conditions do not change so compliance procedures are predictable; and
- membership is valid indefinitely.

UNCLASSIFIED

The obvious continuing benefit is that applying to join the Approved Community is a once only process, and membership removes the need to continually obtain individual export licences for technology related to projects within the scope of the Treaty; thus saving time and money.

Membership to the Approved Community will also reduce the need for Australian companies to seek individual approvals, such as Technical Assistance Agreements. As indicated in the key points, membership will allow timely access to controlled information which will enable members to bid on eligible US contracts, therefore increasing business opportunities for Australian companies because it removes the need to wait for US access approval.

UNCLASSIFIED