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16 October 2012

Minister for Defence
The Hon Stephen Smith MP
Parliament House
Canberra ACT 2600

Dear Minister Smith,

RE: Defence Trade Controls Bill 2011

We write to you as the major industrial and professional organisation representing the interests of university and research institute staff, including academic researchers and research administrators around Australia. We represent more than 26,000 members in all 36 public universities in every state and territory.

We wish to convey our continuing concerns about the likely impact of the *Defence Trade Controls Bill 2011* (the Bill) on Australian researchers, and call on you to make the further amendments to the Bill that have been recommended by the Foreign Affairs Defence and Trade Legislation Committee (Senate Committee) in its final report on the Bill tabled in the Senate on Wednesday 10 October 2012.

We understand that the Bill and the Government amendments tabled in the Senate on Thursday 11 October 2012 are likely to be debated before the end of 2012. We have read recent media reports suggesting that the Government is seeking to secure the passage of the Bill through Parliament in advance of upcoming bilateral defence talks between the Australian and United States governments. We are concerned that the legislative process is being rushed without adequate care being given to address numerous outstanding issues and minimise the risks to Australian university research.

The NTEU acknowledges that the higher education sector shares a responsibility to work collaboratively with the Government to restrict the transfer of certain dual use technologies where there are legitimate risks to national security. Nonetheless, we continue to hold serious concerns about the adequacy of the consultation and policy process, and the resulting likelihood that the Bill will impact negatively on the day-to-day educational and research activities of our members.

We wrote to the Senate Committee in mid-August 2012 expressing our concerns that there has been insufficient consideration of the implications of this legislation for freedom of intellectual inquiry. This key concern remains. Indeed, we are alarmed by the Government's late inclusion, without consultation with our members or other affected stakeholders, of an amendment that if passed into law would create a criminal offence for the publication of certain material related to dual use technologies. While we support the principle of responsible publication, the introduction of such censorship and harsh criminal sanctions for breaches is not only unprecedented in relation to Australian universities, but appears to be directly at odds with the protections for academic freedom that the Government introduced to the *Higher Education Support Act* in late 2011.

The introduction of such controls and offences relating to academic publications moves well beyond the intent of individual academics or institutions in the proliferation of restricted technologies, into the capacity for scientific community to openly and transparently conduct research well before the act of publication itself. Moreover, the imposition of legislative restrictions upon the distribution and

exchange of knowledge is likely to discourage scientific research and risk creating a chilling effect on the scientific debate that is so essential to development of new knowledge and innovation.

We are dismayed that the Government would seek to legislate such a radical reform without completing a regulatory impact assessment, or consulting with those likely to be affected by the change. The implications of this amendment must be thought through carefully before it is passed, and not left to be considered after the legislation has been formalised.

We note that the Senate Committee's majority final report acknowledges a host of other outstanding issues that will need to be addressed during the implementation period. If the Bill is to be debated during the next Parliamentary sitting, the NTEU is highly supportive of amendments that introduce a Steering Committee to manage integration of the legislation into the sector, at least for the stated period of 24 months.

The NTEU would have preferred much stronger engagement with the sector by Defence from the outset. The vast majority of Australian scientists and academic researchers still do not know about this highly important but complex Bill, let alone the Government recent amendments and its plan to push through Bill through Parliament in the next few weeks. We therefore feel strongly that the NTEU should be part of the consultation and trial processes that are to be established as part of the transitional arrangements recommended by the Chief Scientist and endorsed by the Senate Committee.

The NTEU remains very concerned with the scope of Australian research impacted upon by the Bill. In line with the Senate Committee's majority report's findings, we believe a broader definition of research should be included in the Bill to ensure equivalency with the arrangements currently in place for research activities in institutions of higher education in the United States.

The NTEU will continue to be concerned about the implications of the proposed legislation upon our members in terms of both the administrative burden and intellectual freedom of inquiry after passage of the Bill. Given the documented failures of the policy and legislative process to date, we agree with the Senate Committee's recommendation that it should have a role in scrutinising the implementation of the Bill during the transition period.

We urge your office and the Department of Defence to consider these matters with due care, and would welcome any opportunity to discuss our concerns with you.

Yours sincerely,

JEANNIE REA

National President

cc: Minister for Tertiary Education, Skills, Science and Research, Sen the Hon. Chris Evans

Minister for Industry and Innovation, the Hon. Greg Combet, MP

Chair, Senate Committee on Foreign Affairs, Defence and Trade Legislation, Sen the Hon. Ursula Stephens

The Chief Scientist, Professor Ian Chubb

Chair, Universities Australia, Professor Glyn Davis