



Chief Scientist

28 September 2012

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

Dear Senator Stephens

I am writing to advise you of the outcomes of the consultation between the Department of Defence and the university and research sectors on the *Defence Trade Controls Bill (2011)*, which I have now completed.

On 6 September and 21 September 2012 I convened roundtables aimed at reaching an agreed path forward on the Bill, and address concerns with various aspects of the Bill raised by the university and research sectors.

Roundtable participants included the Chief Defence Scientist, Dr Alex Zelinsky, and representatives from Universities Australia, the University of Sydney, the Academy of Technological Sciences, Australian Academy of Science, the Cooperative Research Centres Association, Department of Defence, Department of Industry, Innovation, Science, Research and Tertiary Education and a number of other relevant Commonwealth agencies.

Discussions were fruitful and we reached an agreed path forward, although there are still reservations held by some representatives of the university sector regarding the timing of the legislation.

A list of outcomes agreed to at the roundtable is attached (Attachment A) for your information. In summary, the key developments include:

- establishment of a Strengthened Export Controls Steering Group;
- a transition period of at least 24 months with no offence provisions in effect;
- pilot studies (governed by the Steering Group) to test the regulatory impact of the regime;
- the final Report from the Steering Group to be tabled by Ministers;
- internal institutional practices and structures (including a supplement to the Australian Code for the Responsible Conduct of Research) to be developed to reduce the need to interact with Government agencies on the legislative regime;
- exemptions for basic scientific research and for information already in the public domain.

Pending approval of the terms of reference by the Minister for Defence, I will chair the Steering Group which will provide comprehensive oversight of the 24 months transition period and pilot studies. The Steering Group will monitor and evaluate processes established by the research organisations and Department of Defence to ensure the implementation of the Bill achieves the appropriate balance between supporting research activity and international engagement while protecting national security. The Steering Group will report 6-monthly to both the Minister for Defence, and the Minister for Tertiary Education, Skills, Science and Research. The Ministers are to jointly table the final report of the Steering Group in Parliament.

It has been noted by some representatives of the university sector that in their view a pilot study should precede the enacting of the legislation, not follow it, to enable results from the pilot to inform the final legislation. In my view, the current proposal involving exemptions, legislation with provisions for a transition period, a pilot and a Steering Group with its final advice tabled by Ministers is quite workable. If issues with the Bill are identified through the pilot, the legislation can be amended at a later stage to address these issues. The Steering Group may also recommend to the Ministers that the transition period be extended.

In my view, the amended Bill is a significant improvement on the original, addressing key concerns initially identified by the sector. It does give institutions a very substantial role in managing the process. The inclusion of the transition period, pilot study, and the Steering Group should alleviate many of the sector's concerns and act to help minimise any administrative impacts over time.

I support the amended legislation, incorporating agreed outcomes from the roundtable process.

If you have any further questions, please do not hesitate to contact me.

Yours sincerely

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Professor Ian Chubb AC
Chief Scientist

cc: The Hon Stephen Smith
Minister for Defence

Senator the Hon Chris Evans
Minister for Tertiary Education, Skills, Science and Research

Attachment A

Agreed outcomes of the roundtable discussion chaired by the Chief Scientist on 21 September 2012

- Establish the Strengthened Export Controls Steering Group, reporting to the Minister for Defence and the Minister for Tertiary Education, Skills, Science and Research (the Ministers).
- A transition period of at least 24 months with no offence provisions in effect. The Steering Group may recommend an extension to this non-offence provision transition period.
- A pilot program (not limited to a single pilot) to test the regulatory impact of the regime.
 - The pilot to determine the costs and benefits associated with the regime, the feasibility of its implementation, the processes and interaction required to successfully implement the bill during the transition period, and identify any aspects that require modification prior to the offence provisions coming into full effect.
 - The framework for the pilot to be agreed by the Steering Group and, pending consideration of the Steering Group, will span two grant funding cycles with interim reporting to identify improvements.
 - The pilot will review mechanisms by which organisations can determine thresholds for technologies assessments beyond which an organisation will consult with Defence and, if required, seek a permit.
- Internal institutional practices and structures (including a supplement to the Australian Code for the Responsible Conduct of Research) to be developed to reduce the need to interact with Government agencies on the legislative regime.
- The Model to be tested as part of the pilot will consist of an export control regime that:
 - Begins with an institutional assessment process for open academically based research in accordance with guidelines incorporated into the supplement to the Australian Code for the Responsible Conduct of Research. This step recognises that not all activities to supply technology to 'develop', 'produce', or in comes cases 'use', an item on the DSGL will involve the level of detail which is peculiarly responsible for achieving or extending the controlled performance levels, characteristics or functions of the DSGL listed item. The institutions involved in activities of this type must have processes for assessing technology and for determining when advice is to be sought from Defence about a possible permit in accordance with established guidelines.
 - Provides exemptions from export controls for research, where :
 - The activity is 'basic scientific research', as defined in the DSGL and Wassenaar Arrangements (Experimental or theoretical work

undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective).

- The technology is already 'in the public domain', as defined in the DSGL (technology or software which has been made available without further restrictions upon its further dissemination (copyright restrictions do not remove technology or software from being in the public domain))
- Provides exemptions for transfers of technologies within Australia's domestic borders.
- The legislation that is passed must incorporate or allow for the following:
 - modification, if necessary, once the results of the pilot studies are known.
 - A non-offence transition period of no less than 24 months, and with the possibility of an extension on the recommendations of the Steering Group.
 - Pilot studies governed by the Steering Group.
 - Pilot studies to test outcomes from the Model.
 - A formal evaluation against agreed criteria to include outcomes of pilot studies.
 - A final report from the Steering Group to be submitted to the Ministers to be tabled in Parliament.
 - Ordinary scientific communication is permissible, where the institution and individual have complied with established guidelines which include the institutional assessment model outlined above
 - The provisions relating to Defence Services are deleted.
 - Controls on foreign employees and students in Australia are removed.
 - Controls on Australians overseas are removed.
- The indicative flowchart that has been tabled, incorporating an institutional management framework for research that falls below a certain technology assessment threshold and, above that threshold, an application for a permit to Defence would have to be made. This is to be tested during the pilot.
- Amendments to the legislation and the regulations to be drafted reasonably quickly, with appropriate consultation with the sector. A small sub group will meet to consider the amendments.
- NHMRC to take the lead in developing a supplement to the Australian Code for the Responsible Conduct of Research applicable to universities and other research institutions, including government agencies and be:
 - developed in consultation with relevant research institutions, government departments, other funding agencies, and the Steering Group;
 - supported by the existing reference group.

