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Vice-Chancellor and Principal

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

By email: erica.lewis@innovation.gov.au

Dear Minister Evans

The University of Sydney, Universities Australia and other universities have recently become aware of draft legislation under consideration by the Senate Foreign Affairs, Defence, and Trade Committee, which has the potential inadvertently to impede university teaching and research across an array of national research priorities and core Australian academic strengths.

Given the potential implications of the ***Defence Trade Controls Bill 2011 (Cth)*** for the staff of the University of Sydney, the Australian higher education sector as a whole, and public good research more broadly, we thought it important to alert you to these developments and seek your assistance in achieving appropriate amendments to the Bill and supporting instruments.

It seems unfortunate that the Bill has progressed through the House of Representatives to the Senate, apparently without dialogue occurring between the Department of Defence, the higher education sector, other public research organisations, and key Commonwealth agencies with responsibilities for higher education and research policy. The fact that the Senate Inquiry received just 11 written submissions, with only two of these coming from the public education and research sectors (Universities Australia and The University of Sydney) is thus of considerable concern.

Full details about the Bill, along with the University of Sydney and Universities Australia submissions to the Senate Inquiry are available through the Senate Committee [website](#). A draft transcript of the public hearing into the Bill held by the Committee on 2 March 2012 is also available through its website, and I would draw your attention to the evidence given by Universities Australia and the Department of Defence.

The Bill has been proposed with the intention (among others) of satisfying Australia's defence trade treaty obligations with the US and closing some of the 'gaps' in the existing defence export controls and customs law that have occurred as a result of advances in communication technology. Of specific relevance to universities, and critically the teaching and research activities of their academic employees, the Bill seeks to expand the existing permit control regime covering trade in goods on the ***Defence and Strategic Goods List Amendment 2011 ('DSGL')*** so that '*intangible transfers*' related to any goods on the list are also covered. The Explanatory Memorandum to the Bill (p.18) refers to: '*the intangible transfer of research results, papers, seminars, conferences, and instructions written or recorded, working knowledge, design drawings, models, operation manuals, skills training, potentially including the content of some post-graduate courses and catalogues*'.



We are concerned that, as proposed, the legislation will have the unintended consequence of inhibiting, if not effectively preventing teaching and research in Australian universities, in a wide array of disciplines where so-called 'dual-use' goods and technologies that appear on the DSGL are used routinely for both educational and research purposes.

For example, the proposed new controls would apply to the provision of *'defence services'* in relation to any DSGL good, as well as to technology relating to items on the DSGL, where those services are provided to a *'foreign person'*. Given the large numbers of international students studying at Australian universities, and the nature of the research enterprise in the global knowledge economy, services that are potentially prohibited by the Bill cover our core educational and research activities as these routinely include: *'the giving of assistance (including training) in relation to the design, development, modification, operation and use of the relevant goods or technology'*. As currently drafted, full compliance with the proposed laws in some disciplines could require the segregation of foreign students from settings where educational and research activities about items on the DSGL occur. The penalties for individual members of staff that breach the proposed laws are criminal and severe.

The DSGL is extraordinarily expansive. For example, it includes a wide range of electronic, optical, and other technologies commonly found in cutting-edge research laboratories which nevertheless have no focus on defence, or military technology. The list also includes an array of materials, chemicals, microorganisms and toxins commonly used in university teaching and research in many science, engineering and health disciplines.

The potential impact of the proposed Bill on many core areas of Australian teaching and research strength, including multiple Commonwealth-funded Centres of Excellence, is only just becoming apparent to us through discussions with our researchers. As currently proposed, the controls may run the risk of eliminating Australia's technological lead in many areas of key strategic national interest, and impact deeply on our attractiveness to international students seeking opportunities for advanced study.

The associated loss of talent or brain-drain, as it might be described colloquially, has the potential to limit severely Australia's ability to develop new high-tech industries and conduct research that could lead to enormous public health and other benefits. The likely flow-down effects for the international competitiveness of the education sector as a whole, as well as broader economic impacts related to the stifling of innovation in Australia, are likely to be significant.

At the request of the Senate Committee, we are assisting Universities Australia with the provision of case studies, which demonstrate the practical impact that the proposed laws would have on the teaching and research activities of our staff. We are hopeful that as part of this process the Committee will be able to meet with potentially affected academics to understand the practical implications of the proposed reforms on their teaching and research activities. We are also working with Universities Australia to suggest appropriate amendments to the primary legislation and to engage with the Department of Defence to find solutions which strike a balance between the need to prevent the misuse of sensitive technologies and allowing Australian university education and research to prosper in the national interest.

The University of Sydney is deeply committed to securing Australia's national security, as we all are, by working with Defence to address its concerns. We also appreciate that the negative impacts outlined above are not intended by the authors of the legislation.



THE UNIVERSITY OF
SYDNEY

I would be deeply grateful for your assistance in securing appropriate modifications to the Bill and its supporting instruments and processes. The University would be happy to arrange briefings as appropriate.

For further information please contact

Yours sincerely

Stephen Garton
Acting Vice-Chancellor

Cc. *The Hon. Greg Combet, Minister for Industry and Innovation*
The Hon. Tanya Plibersek, Minister for Health and Ageing
The Hon. Jason Clare, Minister for Defence Materiel