

15th August 2012

Senator Ursula Stephen
Chair
Senate Foreign Affairs, Defence and Trade Committee
Parliament House ACT 2600
By email: fadt.sen@aph.gov.au



Dear Senator Stephens,

Defence Trade Controls Bill 2011

I write on behalf of the Group of Eight research-intensive universities, in my capacity as Chair of its Deputy Vice-Chancellors (Research) Committee in relation to Part 2 of the *Defence Trade Controls Bill 2011 (Cth)* ("**The Bill**"). I wish to place on the record the Go8's very strong support for the supplementary submissions that have been provided to the Committee by Universities Australia and the University of Sydney.

Since becoming aware of the potential implications of the Bill for Australian higher education and research in late 2011, representatives of our universities have worked with colleagues through the processes Universities Australia has established to deal with this Bill and the Department of Foreign Affairs Autonomous Sanctions legislation. The process has included legal representatives from two of our members, Monash University and the ANU, appearing before the Committee with Dr Kinnear for Universities Australia in March 2012.

Since March, we have continued to work closely with Universities Australia and Professor Trehwella (University of Sydney) as they have led the sector's negotiations with Defence, in confidence at Defence's request, and at the request of the Committee. Throughout the consultation process Universities Australia and Professor Trehwella have kept the sector well informed of developments as they have unfolded.

Given the highly technical and complex nature of the issues, along with Defence's desire to keep the discussions manageable and confidential to a point, we have been comfortable working within these parameters, but have been monitoring developments.

Until mid-July, we had understood that good progress was being made by Defence and Universities Australia towards reaching agreement (within the constraints of the framework provided by the Bill as drafted) over an approach to implementation with reasonable prospects of protecting legitimate national security risks without unnecessarily impeding Australian scientific research. We were disappointed when advised that Defence appeared to have rejected the "**Option 3**" that had been developed as a result of collaborative discussions with Universities Australia and Sydney University, in favour of a new "**Option 4**", which was considered unworkable by Universities Australia's working group.

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Our concerns deepened when advised that in addition to appearing to prefer **Option 4**, Defence had informed Universities Australia that it intended to recommend to the Government that amendments be made to the Bill to expand the coverage of the proposed permit regime to include controls over the publication of research findings involving technology on Defence Strategic Goods List (“**DSGL**”).

We stress that we accept that any effective approach to controlling the dissemination of information about DSGL technology that may pose a threat to national security will need to address the issue of the entry of such material into the public domain in the first place. There is good international evidence that demonstrates that there are significant legal, policy and practical challenges to doing this effectively. It will take many years to develop appropriate frameworks and the final solution will require a mix of legislative and collaborative non-legislative approaches: government-wide policies, codes of conduct, education campaigns etc.

By way of example, in relation to the practicalities of Defence controlling academic publications, between 2003 and 2008 staff employed in Australian universities produced some 330,000 research outputs. Of these, more than half (174,654 or an average of 29,000 a year) came from the scientific and engineering disciplines where there is likely to be considerable usage of dual use technology on the DSGL¹. Excluding the publications of research students not picked up by the ERA data, if just 20 per of the current activity involves DSGL technology, many thousands of researchers and in excess of 5,000 research publications a year would be affected annually.

In addition to the logistics of Defence’s preferred approach as we understand it, the potential for conflict with existing laws and policies supporting freedom of inquiry and open access to publicly funding research need to be worked through carefully. For example, publication of academic research activity is currently protected or encouraged through specific clauses in the *Higher Education Support Act 2003 (Cth)*, the enabling Acts of many Australian universities, and the funding policies of the research councils. Developments out of the US indicate that legislative approaches alone are not sufficient, and that the issues need to be addressed through collaborative discussions between Defence agencies, Defence industries, publicly funded research organisations, as well as Commonwealth and state research funding bodies.

We are deeply concerned that, despite requests from Universities Australia, Defence has not, to date, provided the sector with formal advice about how the Government plans to implement its preferred option, including the control of academic research publications.

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¹ Data from the Australian Research Council’s data from the first Excellence in Research for Australia Initiative (ERA): http://www.arc.gov.au/pdf/ERA_s1.pdf

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The Universities Australia and University of Sydney supplementary submissions detail the sector's engagement with Defence since March and the sector's continuing concerns. We reiterate our support for their representation of the sector's views, and we offer our support to work collaboratively with the Defence, the Government, the Committee and other stakeholders to find solutions that balance legitimate national security and science competitiveness interests.

We urge the Committee to recommend that passage of Part 2 of the Bill is delayed until Defence can provide the Committee with a framework for implementation that has good prospects for success, and which has the broad support of Australia's public research community.

Yours sincerely

Professor Les Field
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