

# Chapter 3

## Recommendations

### Proposed amendments

3.1 The committee understands that it is the government's intention to introduce amendments to the bill which incorporate the outcomes from the roundtable discussions. The committee understands the effort that went into the agreements reached during the roundtable process and wants to underline some of the key recommendations. It is essential that the government and Defence honour the agreements with a firm undertaking in the legislation; this will be essential to the future relationship with the university and research sector, and other commonwealth departments which is needed for implementation. The committee therefore recommends that the bill incorporate or allow for:

- 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.<sup>1</sup>

3.2 The committee notes in particular the agreements reached during the roundtable discussions to:

- establish the Strengthened Export Control Steering Group;
- have a transition period of at least 24 months with no offence provisions in effect;

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1 Professor Ian Chubb, Australian Chief Scientist, *Submission 21*, p. 3.

- have exemptions for basic scientific research and for information already in the public domain; and
- test the given model as part of a pilot program.<sup>2</sup>

3.3 The committee believes that it would devalue the hard work put into the consultation process, and damage the important relationship between Defence and its stakeholders, if the above agreements were not incorporated in government amendments to the bill.

### **Export Controls Steering Group**

3.4 The committee believes that the Export Controls Steering Group (ECSG) has a vital role in the design of the implementation process for the provisions of the bill and wants to ensure that the ECSG will have both the representation and the authority to provide timely and informed advice to the ministers and to Parliament. The committee notes that during the second roundtable, draft terms of reference were circulated and approved and recommends these be incorporated in the bill under amendments establishing the ECSG. The terms of reference are as follows:

The Steering Group's function is to provide advice to the Department of Defence and Minister for Defence, and the Minister for Tertiary Education, Skills, Science and Research (the Ministers) throughout the transition period of the Defence Trade Controls Act in relation to:

- the adequacy of organisational and government arrangements to identify, assess and manage risks, costs and administrative burden associated with intangible transfers of DSGT technologies;
- oversight, design and delivery of a pilot program to identify the adequacy of the legislation, regulations, implementation arrangements and resources for regulating intangible transfers;
- recommendations on amendments to legislation, regulations and implementing arrangements.

In order to fulfil its role, the Steering Group will:

- (a) consider quarterly progress reports from participants in the pilot on implementation of the strengthened export controls;
- (b) through the Chair, report to the Ministers every six months; and
- (c) if required by the Ministers, provide additional reporting.

The Steering Group will advise the Department of Defence on how to obtain appropriate technical expertise regarding Australian Government consideration of the control lists of international regimes and the Australian DSGT.

The Steering Group may establish sub-groups, as required, to support its function. Subgroups will report back to the Steering Group.

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2 Professor Ian Chubb, Australian Chief Scientist, *Submission 21*, p. 2.

### *Membership*

The Steering Group membership will comprise:

- Australia's Chief Scientist as the Chair; up to four representatives from the industry sector, one of whom is the co-Deputy Chair;
- two representatives from the university/research sectors, one of whom is the co-Deputy Chair;
- the CEO of the National Health and Medical Research Council, or representative nominated by that CEO;
- the CEO of the Australian Research Council, or representative nominated by that CEO;
- a representative from the Department of Industry, Innovation, Science, Research and Tertiary Education; and
- a representative from the Department of Defence.

There will be no substitutions or additional attendees unless agreed with the Chair.

The Steering Group will be established for the period of the transition period but the period may be extended if agreed by the Ministers.

### *Reporting*

The Chair will report six monthly, in writing, to the Ministers and the Department of Defence, including any dissenting membership views.

The Steering Group will provide a final report, in writing, at the conclusion of the two year transition period to the Ministers. The Ministers will jointly table this report in the Parliament.

### *Meetings*

The frequency and timing of meetings of the Steering Group is at the discretion of the Chair, however it is expected to meet at least quarterly, supplemented by out of session consideration of matters as necessary.

A quorum of the Steering Group will be met when there are a minimum of the Chair, two public sector representatives, one industry representative and one university/research representative.

### *Secretariat*

The Steering Group will be supported by a Secretariat provided by the Defence Export Control Office.

The Secretariat will:

- (a) prepare and circulate agendas in conjunction with the Chair;
- (b) work with the authors of agenda papers to ensure quality and timeliness;
- (c) ensure that the agenda approved by the Chair and papers are received by members at least one week before each meeting;
- (d) prepare and provide to the Chair, within one week of the meeting, the minutes, outcomes and actions arising;

- (e) circulate the meeting outcomes to all members following clearance by the Chair; and
- (f) maintain Steering Group records.<sup>3</sup>

3.5 The committee notes that a model is to be used as part of the pilot program to test the regulatory impact of the regime. The committee recommends that the pilot program and the model to be adopted for the test are as set out in the agreed outcomes from the roundtable.<sup>4</sup>

3.6 The committee takes this opportunity to emphasise that amendments to the bill must fully and accurately reflect the outcomes of the roundtable discussions. This principle must also apply to regulations made under this legislation.

3.7 As noted in previous chapters, the committee drew attention to recommendations made in the committee's preliminary report. They are given below in full.

**Recommendation 1 (preliminary report): The committee recommends that the government consider including in the bill the criteria provided in the explanatory memorandum in relation to permits issued under clause 11 so that the Parliament can scrutinise them properly and potential applicants can be clear as to the criteria that will be used to assess their applications.<sup>5</sup>**

**Recommendation 2 (preliminary report): In consultation with all relevant sectors, the committee recommends that Defence provide examples to illustrate the scope of the definition of 'intangibles' and 'intangible transfer' in the explanatory memorandum.<sup>6</sup>**

**Recommendation 3 (preliminary report): The committee recommends that Defence include the definition of 'arrange' in the bill, and that in defining the term Defence consult with submitters who have raised issues regarding the scope of the term.<sup>7</sup>**

**Recommendation 5 (preliminary report): The committee recommends that Defence undertake consultation with industry in order to eliminate unnecessary record-keeping.<sup>8</sup>**

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3 Universities Australia, *Submission 11B*, Appendix II, pp. 12–14.

4 Professor Ian Chubb, Australian Chief Scientist, *Submission 21*, pp. 3–4.

5 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraph 2.13.

6 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraph 2.21.

7 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraph 2.29.

8 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraph 3.32.

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**Recommendation 7 (preliminary report):** The regulations are an important part of the implementation of the strengthened export controls. Defence has proposed that the regulations will be amended in line with any amendments made to the bill. The committee recommends that the regulations form an integral part of the consultation process.<sup>9</sup>

## **Reporting**

3.8 The committee believes that an important part of the ECSG's work will be the vital contribution that the pilot program provides to the development of the implementation of provisions in the bill. While the committee hopes that the good will demonstrated during the roundtable discussions will continue, the committee is mindful of the concerns expressed by the University of Sydney and Universities Australia regarding the outstanding issues to be resolved. The committee sees significant benefits in its oversight continuing after its final report has been tabled.

### **Recommendation 1**

3.9 The committee refers to its previous recommendation 8<sup>10</sup>, and asks that the regular reports of the ECSG provided to the minister also be provided to the committee.

### **Recommendation 2**

3.10 In light of the ongoing concerns held by stakeholders, the committee believes that implementation of the bill would benefit from further scrutiny. The committee therefore recommends that during the 24 month transition period, the Senate Foreign Affairs, Defence and Trade Legislation Committee conduct a six-monthly examination of progress of the implementation of the provisions of the bill and report to the Senate.

## **Conclusion—final recommendations**

3.11 Committee recognises the importance of the strengthened export controls regime in the bill. The committee appreciates the cooperation of all parties involved in the consultation processes.

### **Recommendation 3**

3.12 Given the advice detailed in this final report, the committee recommends that the bill, with the proposed amendments outlined in this report, should

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9 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraph 4.29.

10 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraph 5.14.

**proceed to debate in the Senate. The committee recommends that the bill, amended as outlined in this report, be passed.**

#### **Recommendation 4**

**3.13 The committee further recommends that Defence use the implementation process for the provisions of the Defence Trade Controls Bill to foster closer links with the research and university sectors and with the Department of Industry, Innovation, Science, Research and Tertiary Education and other relevant departments.**

**Senator the Hon Ursula Stephens  
Chair**