



UNIVERSITIES
AUSTRALIA

DISCOVER LEARN LEAD

Chief Executive:
Belinda Robinson

Our Ref: DTC - AG X 8106

17 May 2013

Dr Kathleen Dermody
Committee Secretary
Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House
Canberra ACT 2600
fadt.sen@aph.gov.au

Dear Dr Dermody

Senate Foreign Affairs, Defence and Trade Legislation Committee – ongoing scrutiny into the implementation of the Defence Trade Controls Act 2012

Universities Australia appreciates the Senate Foreign Affairs, Defence and Trade Legislation Committee role in scrutinising the implementation of the *Defence Trade Controls Act 2012* and for inviting submissions to inform the Committee's first six-monthly report. We understand the Committee aims to provide the report to the Senate during the Parliamentary winter sittings.

The interest of the Committee has been fundamental to ensuring that the development and implementation of the Act proceeds on an informed and measured basis. Universities Australia has appreciated the Committee's understanding that, contrary to the intentions of the legislation, there could be genuinely deleterious effects for the university, research and industry sectors if not handled carefully, and with the benefit of strong stakeholder input. We believe that the Committee's deliberations to date have helped build awareness of the potential risks inherent in the legislation and the need for a coherent and balanced approach to protecting Australia's national security, research, innovation and broader interests.

We welcome the opportunity to comment on the implementation of the Act to date.

At this stage our comments are necessarily tempered by the limited publicly available information on progress with the implementation. This is our overarching concern, and I return to it in more detail below.

On the information available, there appears to have been good progress on several aspects of the implementation process. These align with commitments the Government gave before the legislation was passed, and include:

One Geils Court
Deakin ACT 2600

GPO Box 1142
Canberra ACT 2601
AUSTRALIA

www.universitiesaustralia.edu.au

- establishment of the Strengthened Export Controls Steering Group (SECSG), chaired by the Chief Scientist;
- inclusion on the steering group of two Universities Australia representatives, Professor Peter Høj (Deputy co-Chair) and Professor Mike Calford;
- establishment of a subject specific website at <https://exportcontrols.govspace.gov.au>;
- establishment of numerous trial sites and processes; and
- investigation of an alternative approach to managing the publication of controlled technology as part of the Australian Code for the Responsible Conduct of Research, with SECSG members working jointly with the National Health and Medical Research Council (NHMRC). We understand this work has commenced and that a report will go to the SECSG before the end of July.

Noting these positive developments, we draw the Committee's attention to several aspects of the implementation we believe constrain the benefits that might come from the transitional phase and, if addressed, would provide greater confidence to the university sector in the integrity of the process.

The very tight confidentiality conditions imposed on SECSG members severely limits the information that can be shared with their constituencies and the broader community. It is not obvious that this level of confidentiality is necessary and it is serving to generate suspicion within a sector where the level of interest in the issue is very high.

Universities Australia strongly advocates that priority attention be given to increase the volume, timeliness and substance of communications regarding the trial and transitional developments. We appreciate that some aspects of the Act require confidential treatment, however believe that information only be withheld as an exception rather than the rule, and that a conscientious effort be made to ensure appropriate information is available to stakeholders who will shortly be subject to, and have to work effectively within, the provisions of the Act.

For instance, a delegation of government, university and research representatives from the United States recently met with SECSG members. While their visit has been made public, very little information on the meeting appears to have been released or permission given to attendees to share it with their stakeholders.

A website has been established specifically on the Act, the SECSG and related matters. The information available on the site is factual, succinct and process oriented. More information that addresses the issues and debates that were evident in the development of the legislation would be valuable additions.

Concerns also remain about the implementation and day-to-day administration of the Act as well as the additional impost on universities created by government assessment arrangements, once they are established. Practical issues, which could have a major and costly impact on researchers and their work, include:

- the time taken to complete assessments, the resourcing implications for officials and the availability of subject matter experts to enable informed appraisals to be conducted in a timely fashion;
- the potential effect on the quality of assessments as a consequence of the need for highly specialised expertise in assessing research referrals; and
- the need for effective procedures to support timely decisions and to mitigate the risk of over-cautious decision making or in response to inadequate specialised knowledge.

There may be impacts on university resources that have not been factored into the process. Anecdotal reports from counterparts in universities in the United States suggest their national arrangements have necessitated the diversion of resources to manage the process.

Universities Australia would strongly encourage an extensive trial assessment, using previously published research across a range of disciplines. This would help inform:

- possible scope of matters requiring referral for assessment and exemptions; and
- the comprehensiveness and clarity of guidelines required for the sector.

We welcome the Committee's continuing, active scrutiny of the implementation of the Act, and look forward to engaging constructively as the implementation progresses.

I would be happy to facilitate further advice from Universities Australia or our membership should this be required. Should you wish to further discuss any of the issues raised please contact our Policy Director – Research, Mr Allan Groth

Yours sincerely

Belinda Robinson
Chief Executive