

Chapter 1

Introduction

Background

1.1 On 10 October 2012, the Senate Foreign Affairs, Defence and Trade Legislation Committee tabled its final report on the provisions of the Defence Trade Export Controls Bill 2011. In this report, the committee recommended that:

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.¹

1.2 On 11 October 2012, and in accordance with this recommendation and standing order 25(2)(a), the committee formally undertook to monitor the implementation of the provisions of the bill. The committee resolved that, during the transition period following the enactment of the bill, it would conduct regular six-monthly inquiries into the implementation of the provisions of the legislation and report its progress to the Senate. This is the second six-monthly report.

1.3 The Defence Trade Controls Bill 2011 was passed on 1 November 2012, with amendments. The bill received Royal Assent on 13 November 2012. Its companion bill the Customs Amendment (Military End-Use) Bill 2011 also received Royal Assent on 13 November 2012.

1.4 Draft regulations accompanying the bill, the Defence Trade Controls Regulations 2012, were circulated by the Department of Defence for industry consultation between 22 December 2011 and 17 February 2012. The regulations were made on 30 May 2012 and commenced at the same time as the relevant sections of the Defence Trade Controls Act 2012 (the Act).²

Previous reports

1.5 The committee's preliminary report detailed the flaws in the consultation undertaken by Defence on the Defence Trade Controls Bill 2011. Even after the committee recommended Defence undertake urgent consultation with the university and research sectors, the parties could not reach agreement on a preferred option.³ As

1 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Final Report*, recommendation 2.

2 Defence Trade Controls Regulation 2013.

3 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraphs 4.17–4.26.

at August 2012, Defence and Universities Australia advised the committee that the consultation process had failed to produce a workable compromise.

1.6 Conscious of the importance of the legislation, but insistent that the strengthened export control regime should have no unintended or unnecessary adverse consequences for the university and research sectors, the committee recommended further consultation between Defence and the university and research sectors. Universities Australia convened a series of roundtable discussions chaired by Professor Ian Chubb, the Chief Scientist, which involved all key stakeholders, including Defence.

1.7 On 17 August 2012, soon after the committee had tabled its preliminary report, the then Minister for Defence, the Hon Stephen Smith MP, announced that Mr Ken Peacock AM⁴ and Chief Defence Scientist, Dr Alex Zelinsky, had been appointed to conduct further consultations on the bill, including two further roundtables on 6 and 21 September 2012.

1.8 The committee's final report, tabled in October 2012, took into account the report of Mr Peacock and Dr Zelinsky and the minister's response.⁵ Mr Peacock and Dr Zelinsky recommended amendments to the bill, including a 24 month implementation period during which the provisions of the bill would not apply and a steering group to examine the concerns of stakeholders. These amendments to the bill, agreed to by the Senate and adopted by the House of Representatives, included the establishment of the Strengthened Export Controls Steering Group.

1.9 The committee's first Progress Report on the progress of the implementation of the provisions of the Defence Trade Controls Act 2012 was tabled on 27 June 2013.

Defence Trade Controls Act 2012

1.10 The Act gives effect to the Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation. Signed in 2007 by Prime Minister John Howard and President George W Bush, the treaty was examined by the Australian Joint Standing Committee on Treaties in 2008.⁶ The treaty was ratified on 16 May 2013 when the Minister for Defence, Mr Stephen Smith MP, and His Excellency Jeffrey Bleich, the United States

4 'Mr Peacock chaired the Defence Trade Cooperation Treaty Industry Advisory Panel that supported the development of the Bill. He is a former Member of Council at the Australian War Memorial and former Executive Chairman, Boeing Australia Limited.' The Hon Stephen Smith MP, Minister for Defence; the Hon Jason Clare MP, Minister for Defence Materiel; the Hon Warren Snowdon, Minister for Defence Science and Personnel, 'Joint Media Release – Government to consult on strengthening Australia's defence export controls', Media Release, 17 August 2012.

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

6 Joint Standing Committee on Treaties, *Report No. 94*, 14 May 2008.

Ambassador to Australia, exchanged diplomatic notes. The implementing provisions for the treaty in the Act came into effect on 6 June 2013.⁷ Companies are now able to join the Australian Approved Community.⁸ Membership of the Approved Community allows member companies to 'export or transfer Treaty Articles without requiring separate export licenses or permits from either country [the United States or Australia]'.⁹

1.11 In addition to giving effect to the treaty, the Act also:

- introduces controls on the supply of Defence and Strategic Goods List (DSGL) technology and services;
- creates a registration and permit regime for the brokering of DSGL goods, technology and related services; and
- introduces a number of new criminal offences to enforce the new provisions.

Second report—ongoing scrutiny

1.12 As part of its ongoing scrutiny of the implementation of the Act, the committee wrote to organisations and individuals who had made submissions to its previous inquiries or expressed interest in the Act. The committee also wrote to relevant ministers and departments. Since the tabling of its Progress Report No. 1 in June 2013, the committee has received 6 submissions—these are listed at Appendix 1 and published on the committee's website.

1.13 The committee received the second report of the Strengthened Export Controls Steering Group on 25 February 2014. The government response to the recommendation made in the committee's Progress Report No. 1 was tabled on 8 January 2014.

7 Department of Defence website, 'Australia-United States Defence Trade Cooperation Treaty, <http://www.defence.gov.au/UStadeTreaty/index.htm>, (accessed 26 April 2014).

8 Department of Defence website, 'Australia-United States Defence Trade Cooperation Treaty, <http://www.defence.gov.au/UStadeTreaty/index.htm>, (accessed 26 April 2014).

9 Frequently Asked Questions – Australia-US Defence Trade Cooperation Treaty, <http://www.defence.gov.au/ustradetreaty/faqs.asp> (accessed 26 April 2014).

