

Chapter 1

Terms of the Inquiry

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 inquiries (six-monthly) into the implementation of the provisions of the legislation and report its progress to the Senate. This is the first 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 (the regulations), were circulated by the Department of Defence (Defence) for industry consultation between 22 December 2011 and 17 February 2012. The regulations were made on 30 May 2012 and commence at the same time as the relevant sections of the Defence Trade Controls Act 2012 (the Act).²

Committee's previous reports—background

1.5 In its first inquiry, evidence received by the committee demonstrated that the consultation undertaken by Defence on the proposed legislation was seriously deficient and that as a result Defence was in the dark about likely unintended

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.

consequences.³ Defence commenced consultation in earnest with the Australian research sector about the proposed legislation during March 2012.

1.6 Unfortunately, as detailed at length in the committee's preliminary report, the parties could not reach agreement on a preferred option.⁴ Defence's submission to the committee on 8 August 2012 and Universities Australia's submission on 10 August 2012 both advised the committee that the consultation process had failed to produce a workable compromise.

1.7 While the committee was conscious of the importance of the legislation, it felt that it was equally important to be certain that the strengthened export control regime would have no unintended or unnecessary adverse consequences for the university and research sectors. The committee presented a preliminary report recommending further consultation between Defence and the university and research sectors. Roundtable discussions involving key stakeholders convened by Universities Australia and chaired by the Chief Scientist, Professor Ian Chubb were then conducted by all stakeholders, including Defence.

1.8 On 17 August 2012, soon after the committee had tabled its preliminary report, the Minister for Defence, the Hon Stephen Smith MP (the minister), announced that Mr Ken Peacock AM⁵ 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.

1.9 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.⁶ 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. The committee's final report recommended amendments to the bill. A number of which were agreed to by the Senate and adopted by the House of Representatives, including the establishment of the Strengthened Export Controls Steering Group.

3 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Preliminary Report*, paragraphs 4.1–4.4, 4.11–4.15.

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

5 '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.

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

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 (the treaty). Signed in 2007 by former Prime Minister John Howard and former United States President George W Bush, the treaty was considered by the Australian Joint Standing Committee on Treaties in 2008.⁷ 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 Ambassador to Australia, exchanged diplomatic notes. The implementing provisions for the treaty in the Act came into effect on 6 June 2013.⁸ Companies are now able to join the Australian Approved Community.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 technology and services related to Defence Strategic Goods List (DSGL) technology and goods;
- 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.

First 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 inquiry or expressed interest in the Act. The committee also wrote to relevant ministers and departments. Since the tabling of its final report in October 2012, the committee has received 14 submissions—these are listed at Appendix 1 and published on the committee's website.

1.13 The committee has received advice from Defence that the Steering Group will meet on 20 June 2013 and the report will be available in the weeks following that. The committee has decided to table a short report outlining the issues raised by submitters to date, and will examine the work of the Steering Group in its next six-monthly report.

Acknowledgements

The committee thanks all those who assisted with the inquiry.

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

8 Department of Defence website, 'Australia-United States Defence Trade Cooperation Treaty', <http://www.defence.gov.au/UStradeTreaty/index.htm>, (accessed 20 June 2013).

9 Department of Defence website, 'Australia-United States Defence Trade Cooperation Treaty', <http://www.defence.gov.au/UStradeTreaty/index.htm>, (accessed 20 June 2013).

