

# **Additional Comments by Senator Scott Ludlam**

## **Australian Greens Senator for Western Australia**

1.1 The Australian Greens expressed serious concerns about the Defence Trade Control Bill 2011 during the Senate Foreign Affairs Defence and Trade Committee inquiry and also during the debate of the complex and flawed legislation.

1.2 This legislation suffered from consultation efforts that were characterised as ‘seriously deficient’ in the Committee’s report. The Bill was rushed through the parliament with insufficient time given to examine many amendments at very short notice.

1.3 The Greens continue to be concerned that this legislation subjects Australian academic institutions to a more stringent control regime much broader in scope than is the case in the US, thus threatening the pursuit of free intellectual inquiry so fundamental to civil society and potentially putting our research and innovation systems at a competitive disadvantage.

1.4 The Greens therefore welcome the Strengthened Export Controls Steering Group’s recent public statement noting that notwithstanding the complex differences between the US and Australia export control systems, the US does apply a broad fundamental research exclusion to accredited institutions of higher learning, and that Australia’s chosen approach to restrictions on the publication of controlled technology is more restrictive compared to the arrangements in place in the US.

1.5 The Greens welcome the fact that the Steering Group is developing guidance for researchers and research organisations to assist the two-year pilot process and implementation process, and is considering recommending broader exclusions for dual-use technologies and alternative approaches to managing the publication of controlled technology.

1.6 It is relevant to note for the public research sector that Sections 10, 11, 14A and 58(1) of the Act are not in force to allow the Steering Group to run 2 year trials and pilot programs. We further note that while Sections 10, 14A and 58(1) may not commence until 16 May 2015 - two years from the day the Defence Trade Cooperation Treaty between the United States and Australia entered into force, Section 11, which establishes the permit requirements for the supply of DSGL technology, may be commenced by proclamation at any time after 16 May 2013.

1.7 The Steering Group’s consultation and pilot work is vital to improving and refining the practical procedures and for mitigating the negative impacts of Act. The pilot program must be given sufficient time to test the practical impacts of the legislation, identify any unintended consequences and areas where improvements are required through amendment to the legislation, supporting regulations and administrative processes. The commencement of Section 11 should not be proclaimed until the pilot program has been completed, and agreement has been reached between Defence, the Steering Group and the research sector over a workable approach to the administration of the permit regime.

1.8 The Steering Group's consultation and pilot work is vital to improving and refining the practical procedures and for mitigating the negative impacts of the Act. The pilot program must be given sufficient time to test the practical impacts of the legislation, identify any unintended consequences and areas where improvements are required through amendment to the legislation, supporting regulations and administrative processes. The commencement of Section 11 should not be proclaimed until the pilot program has been completed, and agreement has been reached between Defence, the Steering Group and the research sector over a workable approach to the administration of the permit regime.

1.9 The Committee merely notes that submitters have raised issues regarding undue confidentiality conditions imposed on Steering Group members and the type and amount of information made publicly available.

1.10 The Greens believe the Committee should make recommendations on the benefits of transparency and promoting awareness about this complex legislation for which researchers and academics will need to be prepared.

**Recommendation 1:** The Committee recommends that the Strengthened Export Controls Steering Group and the Department of Defence actively promote awareness, understanding and preparation for adhering to the obligations and responsibilities Australian research and academic community under the Defence Trade Control Act 2012 from May 2015.

**Recommendation 2:** The Committee recommends that confidentiality conditions that restrict Strengthened Export Controls Steering Group members from sharing information with their constituencies be reviewed and amended to enable and encourage clear and open communication between the Steering Group and the research community.

**Senator Scott Ludlam**

**Australian Greens**