

The Senate

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Foreign Affairs, Defence and Trade  
Legislation Committee

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Implementation of the Defence Trade  
Controls Act 2012

Progress report no. 1

June 2013

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# 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.<sup>1</sup>

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).<sup>2</sup>

### 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

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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.<sup>3</sup> 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.<sup>4</sup> 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 AM<sup>5</sup> 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.<sup>6</sup> 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.

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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*.



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## 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.<sup>7</sup> 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.<sup>8</sup> Companies are now able to join the Australian Approved Community.<sup>9</sup>

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.

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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).



# Chapter 2

## Submissions and issues

### Issues identified during committee's original inquiry

2.1 The main issue arising from the committee's inquiry into the Defence Trade Controls Bill 2011 was the desperate need for Defence to consult with those sectors that would be affected by the bill. Through the committee's recommendations, Defence undertook consultation, a series of roundtables, and finally amendments to the bill in order to establish an implementation period of two years. During this time, the Strengthened Export Controls Steering Group (Steering Group) would provide a mechanism through which Defence and stakeholders could resolve concerns about the effect of the Act.

2.2 The university sector also had outstanding concerns, which were not resolved through amendments to the bill. These included:

- the scope of the legislation which imposes greater restrictions on research activity than similar legislation in the US;
- the effect of the bill on 'Freedom of inquiry';
- development of self-assessment processes;
- publication of research and criminal penalties in the bill;
- additional risks and costs incurred as the new regime is implemented; and
- effect on Australia's ongoing engagement in international research.<sup>1</sup>

2.3 The committee understands from submissions attempts to resolve these concerns are being made through the work of the Steering Group and the pilot programs. At the time of writing the Steering Group had not yet presented its first report and so the information the committee has on the work of the Steering Group is taken from its website and from submissions.

2.4 The committee has received a number of submissions since the tabling of its final report on the bill in October 2012. While some of the submissions are positive in regards to the work underway, many still express reservations about the implementation process. In this chapter the committee examines the actions taken by Defence so far in implementing the Act and notes the concerns raised by submitters.

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1 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Trade Controls Bill 2011 [Provisions], Final Report*, p. 13.

## **Defence's actions**

2.5 The Defence Export Controls Office (DECO) has taken a number of actions in relation to implementing the Act.

### ***Strengthened Export Controls Steering Group***

2.6 As defined in section 74A of the Act, the Steering Group functions are to advise the Minister and Research Minister on:

- (a) the adequacy of the organisational and governmental arrangements, and the identification, assessment and management of risks, costs and administrative burden, associated with intangible transfers of DSGL technologies; and
- (b) the oversight, design and delivery of a pilot program to identify the adequacy of this Act, the regulations, the implementation arrangements and the resources for regulating intangible transfers of DSGL technologies; and
- (c) recommendations for amendments to this Act, the regulations and the implementation arrangements in view of the pilot program; and
- (d) whether this Act, the regulations and the implementation arrangements are not more restrictive than United States export control regulations in relation to university activities.

The Group also has any other functions determined, in writing, by the Minister.<sup>2</sup>

2.7 The Steering Group is chaired by Professor Ian Chubb, AC, Chief Scientist of Australia and its members are:

- Professor Peter Høj, co-Deputy Chair (university);
- Mr Ken Peacock AM, co-Deputy Chair (industry);
- Professor Warwick Anderson, CEO National Health and Medical Research Council;
- Professor Aidan Byrne, CEO Australian Research Council;
- Professor Mike Calford, university representative;
- Mr David Gillard (BAEs), industry representative;
- Mr Michael Edwards (Boeing), industry representative;
- Mr Ohad Katz (Raytheon), industry representative; and
- Dr Alex Zelinsky, Defence representative;
- A Department of Innovation, Science, Research and Tertiary Education (DIISRTE) representative.<sup>3</sup>

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2 *Defence Trade Controls Act 2012*, section 74A.

3 Strengthened Export Controls Steering Group website, 'Steering Group', <http://exportcontrols.govspace.gov.au/steering-group/>, (accessed 20 June 2013).

2.8 Appointed by the Minister for Defence, the Steering Group 'provide advice, oversight and review of the Act's operation and implementation over a 24-month period' and report in writing to the Minister for Defence and the Minister for Tertiary Education, Skills, Science and Research.<sup>4</sup>

2.9 Professor Chubb advised the committee that the Steering Group had met on three occasions, including:

...including a recent meeting with representatives from the United States to progress investigation of whether the Act and its implementation arrangements are more restrictive than the United States export control regulations on university activities.<sup>5</sup>

2.10 The Steering Group is also conducting eight pilot programs over the two year implementation period which will test the impact of the Act on the research and industry sectors, 'specifically the strengthened export controls provisions covering the intangible supply and brokering of controlled goods and technology.'<sup>6</sup> Accompanying the pilot programs is the provision of training. The committee notes that DECO has made a number of export controls brochures written specifically for the research and tertiary sectors available on its website.<sup>7</sup>

2.11 Professor Chubb advised the committee that the Steering Group had established a Revised Legislation and Regulation Amendments Sub-Group which considers legal issues relating to the implementation of the Act. The sub-group will also advise the Steering Group on any 'appropriate modifications to the Act should issues be identified throughout the transition period.'<sup>8</sup> The sub-group has met once to date (it will meet quarterly) and the outcomes of the meetings are published online.<sup>9</sup>

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4 Strengthened Export Controls Steering Group website, 'Frequently Asked Questions', <http://exportcontrols.govspace.gov.au/faq/>, (accessed 20 June 2013).

5 *Submission 9*, p. 1.

6 Strengthened Export Controls Steering Group website, 'Pilot Program', <http://exportcontrols.govspace.gov.au/pilot-program/>, (accessed 20 June 2013).

7 Department of Defence website, 'DECO Booklets and Brochures', <http://www.defence.gov.au/deco/publications/booklets/default.htm>, (accessed 20 June 2013).

8 *Submission 9*, p. 1.

9 Strengthened Export Controls Steering Group website, 'Legislation Sub-Group', <http://exportcontrols.govspace.gov.au/publications/legislation-sub-group/>, (accessed 20 June 2013) and Strengthened Export Controls Steering Group website, 'Legislation Sub-Group Meetings', <http://exportcontrols.govspace.gov.au/publications/legislation-sub-group/legislation-sub-group-meetings/>, (accessed 20 June 2013).

*Issues from submissions—Steering Group*

2.12 Submitters such as Universities Australia<sup>10</sup> and the University of Sydney<sup>11</sup> have representatives on the Steering Group and believe that the work of the Steering Group has been positive.

2.13 However, Universities Australia raised some issues regarding the Steering Group in their submission. These issues go to:

- confidentiality conditions imposed on Steering Group members; and
- the type and amount of information made publicly available on the Steering Group's website.

2.14 Universities Australia cited as an example the meeting of the Steering Group with representatives from the United States, noted above at paragraph 2.9. Universities Australia argued that while the meeting was made public, there was little information about the meeting released publicly and Steering Group members were not given permission to share the details of discussions with their stakeholders.<sup>12</sup>

2.15 Universities Australia was concerned that the confidentiality conditions imposed on Steering Group members limited the information that could be shared across the sector. While it appreciated the need for confidentiality around sensitive aspects of the Act, Universities Australia believed that it was '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.'<sup>13</sup>

2.16 The University of Sydney raised similar issues around the confidentiality undertakings for members of the Steering Group. It noted that clear and open communication between the Steering Group and the research community throughout the implementation period would be vital in raising awareness of the implications of the Act. It advised the committee that:

In this regard we note that the university sector's representatives on the SECSG have been unable to provide much information to their constituencies about the work of the SECSG because of confidentiality undertakings they have been required to sign by Defence.<sup>14</sup>

2.17 In fact, the University of Sydney claims that the communication from the Steering Group and Defence has not been sufficient to raise awareness of the Act in the research community:

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10 *Submission 13*, pp. 1—2.

11 *Submission 12*, p. 2—3.

12 *Submission 13*, p. 2.

13 *Submission 13*, p. 2.

14 *Submission 12*, p. 2.

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Levels of awareness about the reforms and the implementation process remain low across the research sector. Among those researchers who are aware of the passage of the legislation there remains considerable confusion about what will be required of them once this section enters into force following the commencement of the U.S. and Australia 'Defense Trade Cooperation Treaty', and when this will occur.<sup>15</sup>

2.18 The National Tertiary Education Union raised questions in its submission regarding the work of the Steering Group and its consultation mechanisms as well as the progress of the eight pilot programs.<sup>16</sup> The committee understands from Professor Chubb's submission that the Steering Group will meet on 20 June 2013 and a report will be produced shortly after that meeting.<sup>17</sup>

### *New IT system—Defence Export Controls Office*

2.19 From late April 2013, Defence has commenced using a new IT system to process applications for various export control permits. The information available from the DECO website describes the gradual rollout of the system:

Initially a small group of regular applicants will be invited to commence registering as clients and submitting online applications. In the following weeks other applicants will be contacted with information about how to commence registering as clients and then submitting online applications.<sup>18</sup>

2.20 The DECO website noted that the system will be used 'to conduct the assessment of applications arising from the Defence Trade Controls Act 2012. Defence will be able to register Brokers and issue permits for the Supply of Technology and for Brokering Arrangements.'<sup>19</sup>

### **Defence Trade Controls Regulations 2013**

2.21 Accompanying the Act are a set of regulations which provide requirements in relation to the permits, offences and obligations under the Act. After the amendments made to the Defence Trade Controls Bill 2011, Defence undertook a second round of consultation on the draft regulations. The committee wrote to Defence seeking information on the consultation process, including the organisations with whom Defence consulted—Defence's response is listed at Appendix 3.

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15 *Submission 12*, p. 2.

16 *Submission 11*, pp. 1—2.

17 *Submission 9*, p. 1.

18 Department of Defence website, 'New Defence Export Controls System', <http://www.defence.gov.au/deco/DECS.htm>, (accessed 20 June 2013).

19 Department of Defence website, 'New Defence Export Controls System', <http://www.defence.gov.au/deco/DECS.htm>, (accessed 20 June 2013).

2.22 The Australian Industry Group raised a number of concerns regarding the regulations in its submission. Specifically it was concerned that there had been delay in the publishing of the final regulations and that this was creating uncertainty for the industry.<sup>20</sup> With the publication of the final regulations, the committee expects that some of the Australian Industry Group's concerns may have been allayed; particularly as the regulations do not commence until the relevant sections of the Act commence.

2.23 However, the committee notes the Australian Industry Group's comments regarding potential lack of awareness in the industry:

Australia's export control system now captures three key elements of trade controls: defence services, brokering and intangible technology transfers. Neither the legislation nor the draft regulations provide sufficient clarity with respect to the requirements that would be attached to these new controls. These concepts may be new to many Australian companies, particularly small and medium enterprises (SMEs). Therefore, it would be helpful to issue regulations soon. Additionally, the new controls reflect Wassenaar Arrangement commitments that have been in place for several years and, for that reason, it may be appropriate to introduce industry at-large to these requirements as soon as possible.<sup>21</sup>

2.24 The committee acknowledges these concerns and urges Defence to ensure that interaction with the industry, particularly SMEs, is both appropriate and effective in conveying all necessary information during the implementation period.

2.25 During Budget Estimates, the committee raised the matter of delays in the processing of applications, with one member noting that the main problem appears to be 'cost-effective time in dealing with applications'.<sup>22</sup> Mr Brendan Sargeant explained that this was something that the Steering Group was also looking at:

We are looking to simplify and streamline as much as possible. But that is something that we want to do through the steering group as part of our consultation process. It is a balance between assurance and not stopping things from happening.<sup>23</sup>

2.26 Mr Sargeant undertook to report to the committee—through the minister—on whether there are applications 'banked up' given the time taken to put in place administrative arrangements prior to the treaty entering into force on 6 June 2013.<sup>24</sup>

2.27 Another committee member sought information from Defence in relation to the targets set by Defence in processing applications. He provided the example of a

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20 *Submission 10*, pp. 1—2.

21 *Submission 10*, p. 2.

22 *Committee Hansard*, Budget Estimates, 3 June 2013, p. 57.

23 *Committee Hansard*, Budget Estimates, 3 June 2013, p. 57.

24 *Committee Hansard*, Budget Estimates, 3 June 2013, p. 56.



case in which it took eight months for a company to obtain a permit. Mr Sargeant explained that while each case is different, Defence does aim to manage expectations and work with those making applications to ensure that the process is as smooth as possible.<sup>25</sup>

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25 *Committee Hansard*, Budget Estimates, 3 June 2013, p. 57.



# Chapter 3

## Conclusion and recommendations

### Conclusion

3.1 At just over six months since the Act received Royal Assent, it is clear that much has been done to set the groundwork for the two year implementation period: the Steering Group has been appointed which includes representatives from industry, research and the university sector; a legislation sub-group has been formed; the pilot programs have been planned; and new materials are available specifically for the research and university sectors. The committee is encouraged by the progress which has been made and looks forward to seeing the Steering Group's first report.

3.2 However the committee notes that a number of submitters have raised concerns about the way in which the Steering Group's work is proceeding including:

- confidentiality conditions imposed on Steering Group members;
- the type and amount of information made publicly available on the Steering Group's website; and
- the need for more certainty regarding implementation of the regulations and their impact on industry.

3.3 The committee is hopeful that submitters, through their representatives on the Steering Group, will be able to resolve these issues. The committee encourages Defence to assist the Steering Group in its efforts to promote awareness of the Act and communicate clearly with the university and research sectors about their responsibilities under the Act.

3.4 The committee notes that the implementation period also provides an opportunity for DECO to examine the timeliness of processing applications. While this matter may not be a direct consequence of the new legislation, DECO should take note of the concerns raised during Budget Estimates and if examination of the processing of applications does identify problems, these can be resolved through the implementation period.

**Recommendation 1**

**The committee recommends that DECO examine the timeliness of processing applications and provide a report to the committee prior to the committee's next six-monthly report. The committee is particularly interested in instances in which there have been delays in processing applications, and what mechanisms are in place to ensure the implementation of the Act does not cause problems in processing applications.**

**Senator the Hon Ursula Stephens**

**Chair**

# **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**

# Appendix 1

## Public submissions

- 1 The University of Sydney
- 2 Department of Industry Innovation, Science, Research and Tertiary Education
- 3 Embassy of the United States of America
- 4 National Tertiary Education Industry Union
- 4A Supplementary Submission
- 5 Universities Australia
- 6 Society of University Lawyers
- 7 Mr Peter Goon, AIRCDRE (Rtd) Edward Bushell
- 8 Biddington Research Pty Ltd
- 9 Professor Ian Chubb AC
- 10 AI Group Defence Council
- 11 National Tertiary Education Union
- 12 The University of Sydney
- 13 Universities Australia
- 14 National Health and Medical Research Council





## **Appendix 2**

### **Tabled documents, answers to questions on notice and additional information**

#### **Additional information and tabled documents**

- 1 Universities Australia – Additional information dated 11 October 2012
- 2 Letter from the Hon Stephen Smith MP, Minister for Defence regarding consultation on the draft Defence Trade Controls Regulations 2013



# **Appendix 3**

## **Additional information – letter from Minister for Defence**

Further information on the consultation process for the draft Defence Trade Controls Regulations 2013





22 MAR 2013

**Stephen Smith MP  
Minister for Defence**

Senator the Hon Ursula Stephens  
Committee Chair  
Foreign Affairs, Defence and Trade Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600



*Ursula*

Dear ~~Senator~~ Stephens

Thank you for your letter of 13 February 2013 requesting details of consultations on the most recent draft *Defence Trade Controls Regulation 2013* and its Explanatory Statement.

During the consultation period from 5 February 2013 to 4 March 2013, the Department of Defence promoted the consultations on the Regulation and its Explanatory Statement in the following ways:

- pre-public release to members of the Strengthened Export Controls Steering Group (SECSG) and the Defence Trade Cooperation Treaty Industry Advisory Panel to allow them to raise any issues prior to the public release, no amendments were proposed by the members of these two groups;
- discussions during the Defence Trade Cooperation Treaty Industry Advisory Panel meeting on 31 January 2013;
- public release on the Defence Export Control Office (DECO) website of the draft Regulation and Explanatory Statement with invitation to make comment;
- Defence media release to advise of the release (enclosed);
- email notification to organisations listed at the enclosure, the list includes all members involved in consultations on the Defence Trade Controls Bill 2011;
- email notification to approximately 475 industry members and government representatives who attended the Treaty Roadshow events in December 2010 and August 2011 and people who have registered on the Treaty mailing list;
- Defence Materiel Organisation's E-portal bulletin board redirecting industry to the DECO website;

- distribution through the Defence Materiel Organisation's business access office network, noting that due to an administrative oversight, this distribution happened on 27 February 2013 and advised the network that the consultation period was in its final week;
- discussions during the SECSG – Legislation and Regulation Sub Group meeting on 15 February 2013 (the Subgroup consists of legal representatives from the government, university and industry sectors);
- John O'Callaghan (Executive Officer, Australian Industry Group Defence Council) meeting with Angus Kirkwood (Assistant Secretary Arms Control) and me on 12 March 2013 to discuss the Regulation; and
- DECO and United States Trade Treaty 1800 numbers for information on the strengthened export controls and Treaty aspects of the Regulation.

A previous draft of the Regulation was publicly consulted from 21 December 2011 to 17 February 2012. The latest promotion measures detailed above expand on the measures Defence used to promote the previous period of consultation. Additional measures include: pre-public release to the SECSG, email notification to 30 organisations from the university and research sector, and discussions during the SECSG – Legislation and Regulation Subgroup meeting.

The Regulation implements the Australian-United States Defence Trade Cooperation Treaty elements of the legislation. The strengthened export controls aspects of the Regulation will be subject to the same two year transition period as the strengthened export controls elements of the Act and can be altered on the recommendation of the SECSG.

Thank you for your continuing interest in the implementation arrangements for this important legislation.

Yours sincerely

Stephen Smith  
Encl

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5 February 2013

**Release of exposure draft of amended Defence Trade Controls Regulation for public consultation**

An exposure draft of the Defence Trade Controls Regulation 2013 is now available for public consultation. The draft Regulation is available for comment until 4 March 2013.

The *Defence Trade Controls Act 2012* was passed by Parliament on 31 October 2012 and received Royal Assent on 13 November 2012. The Regulation was previously released for consultation in late 2011 but has been redrafted to reflect amendments to the Act and comments received during previous consultations. In particular, provisions relating to record-keeping and Australian community member employee requirements have been simplified.

The Act implements the Australia-United States Defence Trade Cooperation Treaty. The Treaty will create a framework for trade between Australia and the United States in certain defence articles, technologies and services without the need for individual United States or Australian export licences.

The Act also strengthens Australia's existing export control measures by regulating the intangible supply of technology relating to defence and strategic goods, and regulating the brokering of defence and strategic goods and technology. These measures eliminate identified gaps in Australia's export control system, align Australia with the accepted international best practice and contribute to international efforts to prevent proliferation of sensitive technology.

A Strengthened Export Controls Steering Group has been appointed by the Minister for Defence to advise on implementation of the strengthened export controls provisions of this new legislation. Over a two-year implementation period, this Steering Group will test the strengthened export controls through a program of pilot studies, and will recommend any necessary amendments to the legislation.

Interested sectors and the public can access and make comment on the draft Regulation and the draft Explanatory Statement on the Defence Export Control Office (DECO) website: [www.defence.gov.au/deco](http://www.defence.gov.au/deco)

Further information on the draft Regulation please email [deco@defence.gov.au](mailto:deco@defence.gov.au)

**Media contact:**  
Defence Media Operations (02) 6127 1999

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## List of Organisations – advised of consultation on the Regulation

The Attorney-General's Department

The Department of Foreign Affairs and Trade

Australian Customs and Border Protection Service

The Department of the Prime Minister and Cabinet

Australia's Chief Scientist

Office of the Gene Technology Regulator

Australian Safeguards and Non-Proliferation Office

Australian Radiation Protection and Nuclear Safety Agency

Australian Security Intelligence Organisation

Geoscience Australia

through the Department of Industry, Innovation, Science, Research and Tertiary Education:

- Commonwealth Scientific and Industrial Research Organisation
- Australian Research Council
- Australian Nuclear Science and Technology Organisation
- Australian Institute of Marine Science

through the Department of Health and Ageing:

- National Health and Medical Research Council
- Public Health Laboratory Network
- Communicable Disease Network Australia

through the Department of Agriculture, Fisheries and Forestry:

- Australian Bureau of Agricultural and Resource Economics and Sciences
- Grains Research & Development Corporation

Peak industry groups:

- The Australian Industry Group
- Australian Industry Defence Network (AIDN)

Peak university and research groups:

- Universities Australia
- Academy of Technological Sciences and Engineering
- Association of Australian Medical Research Institutes
- Australian Academy of Science



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- Science and Technology Australia
- Cooperative Research Centres Association
- National Tertiary Education Union
- Australian Nanotechnology Alliance
- Australian Information Industry Association
- AusBiotech
- Royal Australian Chemical Institute
- Geoscience Australia
- Minerals Council of Australia

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