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Dr Kathleen Dermody
Secretary
Senate Foreign Affairs, Defence and Trade Committee
Parliament House ACT 2600

By email: fadt.sen@aph.gov.au

Dear Dr Dermody

Defence Trade Controls Bill 2011

The University of Sydney wishes to place on the record its keen interest in ensuring that the *Defence Trade Controls Bill 2011* ('**Bill**') strikes an appropriate balance between preventing the misuse of sensitive technology in the interests of national security, and allowing Australian university education and research to prosper.

We certainly appreciate that as a result of advancements in communications technology, Australia's existing system of export controls requires updating to cover so-called intangible transfers of technology and services related to items listed on the Defence and Strategic Goods List ('**DSGL**'). Such reforms are required to bring our laws into line with leading international practice and to meet our treaty obligations.

The Explanatory Memorandum ('**EM**') to the Bill confirms that the legislation will apply to any Australian university, university employee, or student that 'engages' (within the meaning of Part 2 of the Bill) with an overseas business or counterpart, in or outside Australia, in relation to an item in the DSGL. As a result, any university, employee or student contemplating supplying technology relating to a DSGL item (e.g. information relating to the design, development, manufacture etc) to a 'foreign person' (again, as defined in the Bill), and/or to provide certain services (e.g. giving assistance or training in relation to the design, engineering or use of goods or technologies related to those goods where they are listed in the DSGL), will be required to obtain a permit from the Minister of Defence in advance (unless the stated exemptions in the Bill apply), and to keep records of any relevant activity for at least five years. A breach of the legislation could result in criminal sanctions.

While these obligations appear onerous, we note that when preparing the Bill, the Department of Defence ('**Department**') had no information available to it indicating the number of activities in Australian universities likely to be affected. This is not surprising given the highly devolved nature of university administrations and the relative autonomy that academic staff have over their teaching and research activities. For this University alone, eliciting the required information and assessing our levels of exposure relating to 'intangible transfers' (e.g. demonstration, email, fax, Internet) would be a time consuming and resource intensive task. To the extent that such information is not already obtained in compliance with our existing legal and reporting obligations it would no doubt require a coordinated, University-wide, investigation and/or audit of our extensive research and educational activities.



We are therefore pleased to see that the EM advises that in order to ensure that the legislation does not restrict research unnecessarily the Department intends to exempt a range of 'technology' and 'services' from the proposed controls, and anticipates that as a result the controls will only apply to very high-end research conducted by universities and other public sector research organisations. We also recognise that the Bill permits the Minister to specify 'information' by way of legislative instrument for the purposes of the definition of 'technology', which may be used to clarify the exemptions noted in the EM. We are concerned, however, that the recently released exposure draft of the *Defence Trade Controls Regulations 2012* does not provide clarification about how the exemptions proposed in the EM for 'basic research', 'information in the public domain', and 'information required for patent applications' will be implemented. Given that these exemptions will largely determine the application of the proposed reforms to Australian universities and other public research entities, it is important that a draft of any such instrument is issued for consultation before the Bill is passed by the Senate.

Australian universities are typically engaged in a diverse range of activities. These include but are not limited to education in Australia and overseas, basic and applied public good research, consultancy and contract research, publication and research supervision. The setting of inappropriate exemption definitions could result in the legislation being overly restrictive and potentially unworkable in university settings.

Moreover, given that criminal liability may arise in the event of breaches of the legislation, further details are required about how the Department plans to work with the university sector to maximise communication with potentially affected staff and students, and to minimise the administrative burden of compliance on individuals and institutions. We note in this regard that in relation to the Government's new Autonomous Sanctions legislation, which raises similar concerns for the university sector, educational materials and targeted briefings were provided by the Department of Foreign Affairs and Trade. Entering into discussions with the sector about how different approval processes will be implemented for different activities based on assessments of their relative risks would also be very helpful at this point. Beyond these issues of communication and streamlining the implementation of the permit control system in higher education settings, we are concerned about the potential implications of the legislation for the recruitment of foreign staff and research students in particular.

We note that the EM advises that the Department intends to make training available to institutions which consider that they will be affected by the Bill and associated regulations. Training will be important, but we reiterate that we believe that further dialogue with the higher education sector is needed about the design and implementation of the reforms in advance of their commencement. This engagement should appropriately occur through the auspices of Universities Australia.

Yours sincerely

Michael Spence