



Australian Government

National Health and
Medical Research Council

N H M R C

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

Dear Dr Dermody

National Health and Medical Research Council (NHMRC) Submission to the 'Inquiry into the provisions of the Defence Trade Control Bill 2011'

Thank you for your letter of 16 April 2012 inviting NHMRC to make a written submission to the Committee's inquiry. NHMRC is a major funder of research in Australia and the largest funder of health and medical research in Australia.

I note that previous submissions on the Defence Trade Control Bill 2011 (the Bill) have already been received from 2 of our stakeholders: Universities Australia and the University of Sydney and that the sentiments echoed in these submissions were endorsed by a further submission from the Society of University Lawyers. The submission from NHMRC takes those previous submissions into account and also considers that NHMRC has been provided with a draft copy of the paper *Principles and Options for strengthened Export Controls Post-24 April 2012 consultation with the University Sector* (the Options Paper). In this light, it may be helpful to point out initially that this Bill may have ramifications not only for the University Sector, but also for other institutions that conduct health and medical research such as Medical Research Institutes (MRIs).

It is our view that while the Bill seeks to expand export control to intangibles (ie knowledge rather than goods), an aspect that has not previously been controlled or regulated, the scope of the Bill may impact on university and non-university teaching and research activities as some of the technologies and reagents used for teaching purposes may be considered to be potentially useful for arms proliferation. Further, that depending on definitions that will be applied, the academic/research institutions may need to get permit approval for 'export' in relation to teaching activities that deal with items on the Sensitive or Very Sensitive Lists of Dual-use Goods and technology (pp253-274 of the Defence Strategic Goods List (DSGL)). Goods on this list may not be exported from Australia unless a licence or permission has been granted. For example, research may be affected would be research conducted in the area of infection control using bacteria or viruses that are endemic to Australia, but which are considered under other legislation to be sensitive biological and therefore may be subject to the provisions of the Bill. Therefore, while it is noted that 'Controls on "technology" transfer do not apply to information "in the public domain', to 'basic scientific research' or to the 'minimum necessary information for patent applications', the impact of the Bill will largely be dependent upon the definitions of these exceptions,

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In response to the Options Paper provided to NHMRC, Option 3 appears to largely address the concerns raised by both the University of Sydney and Universities Australia. That is that this option broadens the exemptions for 'scientific research' (defined at Annex A of the Options paper). This option recognises public domain information and most scientific research, and advises that a permit will only be required if the technology used or developed is on the DSGL. It is anticipated that the definitions of 'scientific research' and 'public domain information' will be clearly defined in the Defence Trade Control Regulations. It is further anticipated that these definitions will be an essential part of the consultation process.

One remaining issue of concern is the breadth of consultation carried out. While the University sector has been consulted, neither the Medical Research Institute (MRI) sector nor the public health sector has been consulted. In order to ensure that the MRI sector will be consulted, my Office will provide details of the draft Bill to (Association of Australian Medical Research Institutes) AAMRI and provide contact details for AAMRI to the Defence Bill secretariat. However, both the MRI and the public health sectors should be included in the consultation process.

In summary, based on the information provided to NHMRC and that available on the internet, NHMRC:

- Supports Australia's obligations under the Treaty and the intent of the Bill in extending the controls to include intangible exports and implement the treaty with the US;
- Supports concerns from academia about the potential impact on 'routine' teaching and research activities across many sectors including health and medical research;
- Believes that Option 3 provided in the Options paper is most conducive to minimising any adverse impacts on the sector;
- Suggests that without an explicit exemption as per GT Note 4 in the most current DSGL for already published or basic scientific information and research, the regulatory burden on the academic sector may be excessive;
- Supports clarity of all definitions to provide certainty to the academic sector; and
- Supports broad consultation once the Bill has been redrafted, which should include the peak body for MRIs and the public health sector.

Yours, sincerely

Professor Warwick Anderson
Chief Executive Officer

30 May 2012