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Committee Secretary
Senate Standing Committees on Foreign Affairs, Defence and Trade
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

RE: Defence Trade Controls Bill 2011

The National Tertiary Education Union (NTEU) thanks the Standing Committee on Foreign Affairs, Defence and Trade for the opportunity to outline our position in relation to the Defence Trade Controls Bill. NTEU represents over 26,000 higher education staff and is the largest member organisation representing the interests of the academic and scientific research communities in Australia. As such, we appreciate that many of our members and their colleagues may have concerns in relation to the potential implications posed by this Bill, and in particular, the possible impact it may have on academic freedom in our universities.

We understand that the legislation seeks to embed Australia's treaty obligations to the Wassenaar Arrangement guidelines for *Best Practices for Implementing Intangible Transfer of Technology Controls of 2006*.

The legislation proposes the introduction of a control regime where an Australian person transfers specific restricted technologies, including the intangible transfer of scientific research, to a non-Australian (person who does not possess Australian citizenship or permanent residency status). Where this involves the supply or exchange of restricted technologies under the Defence and Strategic Goods List (DSGL), persons or institutions are expected to apply for a permit from the Minister for Defence, in effect the Defence Export Control Office (DECO). The transfer of restricted technologies without a permit is a criminal offence with a penalty of up to 10 years imprisonment, 2,500 penalty units or both.

The control regime applies to a range of workplaces where NTEU has coverage, including university, tertiary and research institutions. We also understand the Minister will have significant discretion about the kinds of permits he or she may issue. This may cover activities involving specific foreign researchers, or alternatively activities relating to a specific research project or conference, from emailing reports to circulating conference papers via social media.

It is regrettable that the explanatory memorandum does not provide an impact analysis upon academic and research staff discrete from the analysis of the impact upon academic institutions. The absence of this impact analysis fails to acknowledge the discrete implications of the legislation upon academics and researchers who bear primary responsibility for identifying whether their research is likely to involve restricted technologies as listed under the DSGL list.

The Department should take into consideration the recent introduction of legislation that requires higher education providers to uphold free intellectual inquiry in relation to learning, teaching and research (see the *Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Act 2011*). Outside of the stated public missions of universities, academics and university researchers conduct research in conditions that are substantially varied from the arrangements of employees of companies and even other statutory corporations - in particular, academics and researchers are expected to exercise discretion, autonomy and intellectual independence in the exchange, proliferation and development of research and ideas. The legislation makes clear that a permit can be issued to an individual, an institution, a business or a broker. It is highly problematic that this does not consider the implications to Australian higher education, where the intention and interests of individual academics and researchers vary from institutions that may apply for permits on their behalf.

In lieu of more formal arrangements that define the scope of interaction between institutions and the academics and researchers they employ, NTEU believes that in the provision and re-issue of permits to university, tertiary or research institutions, a formal component of the Minister's decision-making must be about the effect of issuing that permit, for instance, how many academics and researchers it will impact upon, and what the likely implications for the academic freedom and autonomy of its members will be, based upon the institution's academic freedom policy and prior conduct.

We also understand that the Department of Defence has had negotiations with organisations such as Universities Australia about principles and options for implementation of the legislation, and in particular the instances in which exemptions would apply in the Australian higher education sector.

The NTEU is supportive of Option 4 which matches to Australia's exiting tangible export model and removes different levels of control amongst researchers and academics inside Australia. NTEU understands that the DSGL list would apply to a broader range of scientific research including 'strategic basic' and 'applied research'. This will impact upon many more Australian academics and researchers, but in consideration of the treaty obligations, it is preferable that information and awareness about the sector's obligations is widely distributed amongst the Australian scientific community. NTEU is also concerned that Option 3 would have severe negative implications for scientific collaboration and exchange inside Australia with the differentiation between Australian and resident non-Australian academics and researchers. Option 4 focuses on control of supplies of technology with foreign persons outside of Australia.

In closing, NTEU highlights the importance of further developing a sustainable dialogue between the higher education sector and the Department about its communications strategy. Because the liability for unregulated intangible transfers of restricted technologies is severe and largely borne by individual academics and researchers, the educative process must extend into many key higher education organisations including representative, advocacy and professional organisations.

We would welcome any further opportunities to engage with the Standing Committee on the Union's position to this Bill.

Yours sincerely,

JEANNIE REA

National President

cc: Department of Defence