

Secretary



Australian Government

**Department of Industry
Innovation, Science, Research
and Tertiary Education**

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Dear Senator Stephens

Defence Trade Controls Bill 2011 – supplementary submission

On 2 July 2012 the Department of Industry, Innovation, Science, Research and Tertiary Education provided a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the committee) on the Defence Trade Controls Bill (2011).

In its preliminary report of 15 August 2012, the committee recommended the Chief Scientist, Professor Ian Chubb AC, convene a roundtable of stakeholders to address the issues raised with the committee, including those in my earlier submission. This supplementary submission follows my department's engagement in the consultations with the university and research sector, the Department of Defence and the roundtable meetings chaired by the Chief Scientist.

I note that the Chief Scientist has written to you regarding the outcomes of the roundtable meetings. The Chief Scientist has provided me with a copy of his letter and I fully support the outcomes and views expressed therein.

The consultations have progressed significantly with constructive dialogue regarding the bill and a number of changes identified to the legislation. These changes are outlined in the Chief Scientist's letter to you. I consider that these changes will help ensure the legislation can achieve an appropriate balance between protecting national security, meeting Australia's international obligations, and supporting research and innovation in our universities.

All attendees at the roundtables were actively engaged in the roundtable discussions and were provided with ample opportunity to present their views and to table options for discussion. I understand that some university representatives sought to revisit the same issues on multiple occasions where they were unable to garner support for their proposal from other attendees, including those from the broader research sector. This has resulted in some attendees considering that their views were not heard or potentially disregarded, however, I do not consider this to be the case.

The inclusion of the 24 month transition period, overseen by a steering group, will enable institutions to establish strong internal processes in consultation with the Department of Defence

to ensure compliance with their regulatory obligations. My department will remain actively engaged during the transition period and will be represented on the steering group which will be chaired by the Chief Scientist.

Pilot studies will be undertaken during the transition period and these will provide a valuable opportunity to test the regulatory burden of the bill. The steering group will evaluate the outcomes of the pilot studies and may identify changes to the legislation or institutional processes to address any identified excessive burden or unintended consequences.

In my earlier submission to the committee, I noted that the bill currently includes exemptions from prosecution for Australian Public Service (APS) staff and Australian Federal Police (AFP) officers acting in the course of their duties. However, this is not extended to employees of a research oriented body established under the Commonwealth Authorities and Companies Act, unless otherwise employed under the APS Act. Staff of key Department of Innovation portfolio agencies, including CSIRO and ANSTO, are therefore not afforded this exemption and are potentially subject to prosecution.

My department has discussed this issue with the Department of Defence which has advised that this is intended to ensure consistency for all researchers, whether based at universities or research oriented Commonwealth agencies. To the extent it is feasible within the legislation, I consider staff of government portfolio agencies, which are subject to government oversight, for example by appearing before Senate Estimates, should be subject to the same exemptions as staff employed under the APS Act.

I note that an outcome of the roundtable meetings is that the offence provisions do not come into force until after the 24 month transition period. As such, I do not consider this issue should delay the progress of the bill. The transition period will provide an opportunity to evaluate the internal processes established by institutions to comply with their obligations under the bill. Defence has also advised it will work closely and cooperatively with agencies to minimise non-compliance through inadvertent breaches, and will only seek to prosecute an individual where the breach is deemed to be wilful and malicious.

I am satisfied that the outcomes of the consultations between the Department of Defence and the university and research sector (as detailed in the Chief Scientist's letter) have addressed concerns raised in my previous submission. Amended legislation to reflect the roundtable outcomes will be a significant improvement and help minimise its impact on the sector while also ensuring Australia's export controls are tightened and our international obligations are met.

A number of the research organisations attending the roundtables have confirmed their support for the outcomes and agreed way forward and subsequent passing of the bill, as amended to reflect the roundtable outcomes. These organisations include the CSIRO, the Cooperative Research Centres Association, the Australian Research Council and the Department of Agriculture, Fisheries and Forestry.

The NHMRC has also advised that from its perspective, "the documents [agreed way forward as outlined in the Chief Scientist's letter] are an accurate record of what was agreed and, if successfully implemented through legislation, would form a workable way forward that balances Australia's international commitments with a flexible approach that should minimise unnecessary impacts on Australia's excellent research and academic training sectors."

Universities Australia, representing Australia's 39 universities, has also issued a media release supporting the recommendations of the Senate Committee in its final report, including that the bill, amended as outlined in its report, be passed.

My department will remain actively engaged with the university and research sector and the Department of Defence to ensure the legislation is effectively and appropriately implemented.

If you have any further questions, please do not hesitate to contact me.

Yours sincerely

Dr Don Russell

// October 2012