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Senator Chris Back
Chair, Senate Foreign Affairs Defence and Trade Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Senator Back,

Ongoing scrutiny of the implementation of the Defence Trade Controls Act 2012

Thank you for the opportunity to provide comment on the implementation of the *Defence Trade Controls Amendment Act 2012 (Cth) (the Act)* and for the Senate Foreign Affairs Defence and Trade Committee's ongoing interest in this important legislation.

The work of the Committee has been instrumental in resolving a significant number of the issues affecting the research sector through the consultation process that has resulted in the *Defence Trade Controls Amendment Bill 2015 (Cth) (the Bill)*. We are very pleased that many of the concerns raised by universities during the development of the legislation in 2012 are addressed by amendments proposed in the Bill. However, we urge the Senate to ensure the Bill receives Royal Assent before 16 May 2015, because criminal offence provisions under the Act will otherwise come into effect on that date.

If passed into law, we are confident that the measures proposed in the Bill will significantly reduce the compliance burden for universities, their researchers and support staff, and deliver a regulatory framework that is much better targeted at activities that present real risks to national security. The resulting regulatory regime will be of greater overall benefit and more cost-effective for Government, industry and the public sector research community.

In particular, we welcome the following proposed changes as essential:

- the inclusion of a further 12 month delay in the commencement of the Act's offence provisions;
- the removal of controls on oral discussions about Defence Strategic Goods List (DSGL) Technology;
- the removal of restrictions on the publication of Part 2 (Dual Use) DSGL Technology, unless a Ministerial Notice is issued;
- the decision to allow some pre-publication activities related to Part 2 DSGL Technology to be undertaken without a permit;
- the commitments to allow permits to extend for up to 5 years and be awarded on a whole-of-project basis, and to introduce streamlined permit processing for lower-risk activities;
- the amendments that require the legislation to be reviewed after the first 2 years of operation and every 5 years thereafter; and
- the commitment to establish a permanent process for stakeholder engagement.

The Bill also proposes important amendments to the 'brokering' provisions of the Act. While these controls will rarely apply to research undertaken in the university sector, the easing of the requirements should benefit our industry partners. These changes will alleviate concerns among researchers that their activities might constitute brokering under the Act.

While we strongly support these improvements to the Act, the issues are complex and it will be vital for the Defence Export Control Office (DECO) to continue working with stakeholders on the detail over the coming months. For example, DECO's consultation sessions have been useful in highlighting the need for more detail and clarity in areas including the following:

- the application of the control regime to academic teaching activities that are recorded and accessed electronically;
- the activities that will be covered by the proposed pre-publication exemption;
- multi-jurisdictional issues - for example, the requirements where an Australian researcher travels overseas and communicates in relation to DSG technology;
- the operation of the proposed exclusions for patents and medical devices;
- how the proposed streamlined permit system will work with the Australian General Export Licences (AUSGELs); and
- the detail of the record keeping requirements for researchers and institutions.

We would be happy to discuss or elaborate on each of these issues if that would be of assistance and acknowledge the commitments DECO's staff have given at recent briefing sessions about the value of continuing dialogue with the research sector. Ongoing cooperation between DECO and the research community will be essential.

We therefore welcome the Government's commitment to extend the term of the Strengthened Export Control Steering Group (SECSG), and look forward to learning more details about the scope of its role during the Senate's consideration of the Bill. The Steering Group, with strong support from its expert working groups, DECO and the Department of Industry, has played a critical role in ensuring that the concerns of stakeholders are heard and addressed. Many important details will need to be finalised during the Act's extended implementation period, and ongoing independent monitoring and advice will be invaluable.

Proposed amendments to the Bill require the operation of the Act (other than Parts 3 and 4) to be reviewed two years after the commencement of the offence provisions, but do not specify the body or individuals who will conduct the review. It will be critical that the review is independent, and we recommend that the SECSG and its working groups are maintained to monitor implementation and conduct or oversee the first review of the scheme's operation.

We also consider that the use of external expertise to assist the Minister to make determinations under the Act will be necessary in many cases related to the research sector, and recommend that a formal mechanism is established whereby such expertise is available to support DECO and the Minister on a permanent basis. We note that the current intention is to access this expertise at the time of the reviews. This arrangement would be much more transparent and effective if were built into the framework rather than established *ad hoc* on a case-by-case basis. There are models in place internationally that could be applied in Australia, and we look forward to continuing discussions with DECO about how best to ensure the timely provision of appropriate expert scientific advice.

Finally, given the significance of the national security, research and innovation system issues at stake with this legislation, we believe that the FADT Committee should continue to provide oversight of the implementation of the Act once amended. The Committee's six monthly reviews of the implementation period have demonstrated how the Parliamentary process can work in the national interest - delivering the improvements evident in the Bill - and ensuring that government agencies and affected stakeholders work collaboratively to find practical solutions.

We therefore urge the Committee to continue formally monitoring the Act's implementation annually for the next two years, and to consider the need for continuing involvement at that time.

Yours sincerely,

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