

Defence Trade Controls Bill and the implications for Academic Freedom

The Defence Trade Controls Bill (Cwth) (Bill) is seeking to legislate Australia's treaty obligations under the [2007 Australia – United States Defence Trade Cooperation Treaty](#) originally negotiated between former Prime Minister John Howard and US President George W. Bush.¹ The Government is now seeking to secure the passage of the Bill through Parliament in advance of upcoming bilateral defence talks between the Australian and United States governments. This means the legislation will be debated before the start of November 2012, as the US Secretary of State is visiting Australia in mid-November.

The purpose of this briefing note is to provide Branches with important information about the Bill, and to ensure you are aware of the availability of further online resources.

We encourage members to join in the university and research sectors' efforts to raise awareness about the Bill and to ensure that amendments to the Bill address the sector's key issues. Of particular importance is the need to ensure our concerns about academic freedom are communicated to parliamentarians.

We encourage members to contact their local Federal MPs and Senators to express concerns about the implications for their research and for the university sector.

BACKGROUND: NEW REGULATIONS RUN BY DEFENCE ON THE 'INTANGIBLE TRANSFER' OF RESEARCH

The legislation seeks to introduce regulations in which Australian academic researchers are compelled to consider whether the supply or exchange of scientific research falls under the [Defence and Strategic Goods List \(DSGL\)](#)², and where it does to apply for a permit from the Department of Defence (specifically the [Defence Export Control Office](#)).³ 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 Treaty applies to two kinds of technologies considered on the Defence and Strategic Goods List (DSGL) administered by the Department of Defence, a 'List of Dual-Use Goods and Technologies' and

¹ http://www.defence.gov.au/publications/DefenceTradeCooperation_Treaty.pdf

² <http://www.comlaw.gov.au/Details/F2011L02061>

³ <http://www.defence.gov.au/deco/>

the 'Munitions List'. Dual-Use Goods and Technologies, in particular, can include research that could either be used for military or civilian purposes.

This Bill therefore imposes additional regulations that will now apply to 'intangible transfers' including the communication and exchange of research. As stated in the Explanatory memorandum for the Bill:⁴

At present, technology listed in the DSGl requires permission from the Minister for Defence for it to be exported in the form of a tangible good (for example, on paper or a computer drive). This Bill introduces provisions to control identical technology when transferred via intangible means, for instance via email, facsimile or internet. (46)

If passed into law, recent amendments to the Bill even create an explicit criminal offence for the 'publication' of certain material related to dual use technologies, thus impacting upon the capacity for Australian scientific endeavour in a very fundamental way.

The legislation means that academic researchers, research staff, and other individuals who may be involved in the exchange, communication or publication of research, from a wide range of disciplinary fields should become familiar with the DSGl list; the contexts in which they may require a permit to proceed with ordinary modes of scientific communication and exchange; and be prepared to apply to the Defence Department for a permit where their research potentially falls under the List.

The scope of research impacted by the Act is highlighted by [Dr Michael J. Biercuk](#) who states the appearance on the DSGl of atomic frequency standards, low-phase-noise oscillators, radio-frequency amplifiers and electronic systems, and the like, mean that key technologies for the international Square-Kilometre-Array would likely be controlled.⁵

As we have [highlighted](#) to the Defence Minister, Mr Stephen Smith, the introduction of such harsh criminal sanctions for a breach is not only unprecedented in relation to Australian universities, but appears to be directly at odds with the protections for academic freedom that the Government introduced to the *Higher Education Support Act* in late 2011.⁶

PROGRESS OF THE BILL

The Bill was introduced on 2 November 2011 and was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee on 10 November 2011. The Progress of the Bill is documented at the [following link](#).⁷

Public hearings about the Bill were conducted in March 2012 largely with Universities Australia and the University of Sydney. Negotiations occurred around four Options in relation to the way a permit regime would work. These negotiations broke down.

⁴ http://www.austlii.edu.au/au/legis/cth/bill_em/dtcb2011217/memo_0.html

⁵ <http://theconversation.edu.au/science-and-the-slammer-the-consequences-of-australias-new-export-control-regime-10127>

⁶ <http://www.nieu.org.au/article/NTEU-sets-out-concerns-on-the-proposed-Defence-Trade-Controls-Bill-13498>

⁷ http://www.apf.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4700

The Senate Committee delivered a [preliminary report](#) on 15 August 2012.⁸ Following the release of the Report further Roundtable discussions convened by the Chief Scientist, Professor Ian Chubb occurred in September 2012.

The Senate Foreign Affairs Defence and Trade Committee handed down its [final report](#) on the Bill last Wednesday 10 October 2012 introducing a set of recommended amendments to the legislation.⁹ The report includes importing dissenting comments by both the Greens and the Liberals in which the legislation is described as ‘a complex and flawed piece of legislation that should not be rushed through the Parliament’.

The [government’s amendments](#) to the bill, tabled Thursday 11 October 2012, are available through the Parliamentary website.¹⁰

A motion put by Senator Scott Ludlam (Greens WA) on 11 October sought to return the Government’s proposed amendments to the Senate Committee. The motion was defeated as the Opposition decided not to support it because in spite of the legislative flaws, because of the urgency in implementing the Australia United States Defence Cooperation Treaty (2007) signed off by the former Howard Coalition Government. Senator Ludlam’s statements are available [here](#).¹¹ Senator David Johnston’s (Liberals WA) comments are available [here](#).¹²

MEDIA AND OTHER LINKS IN RELATION TO THE DEFENCE TRADE CONTROLS BILL

- The Conversation editor, [Justin Norrie](#) and the [Sydney Morning Herald](#) reported about the legislation on 22 March 2012.¹³
- [The Australian](#) and Crikey’s [Bernard Keane](#) consider the preliminary report by the FADT Senate Committee:¹⁴
- University of Sydney DVC-R Jill Trehwella commented about it in the [Sydney Morning Herald](#) on 10 October.¹⁵ The Conversation has published another article on this matter by [Dr Michael J. Biercuk](#) on 16 October.¹⁶

KEY UNION MESSAGES:

NTEU has made a number of published statements about the Bill on the [11 October](#) and [16 October](#).¹⁷ It would be useful in any communication with parliamentarians that they understand

⁸

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fadt_ctte/trade_controls/preliminary_report/index.htm

⁹ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fadt_ctte/trade_controls/report/index.htm

¹⁰ http://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r4700_amend_e32042a5-56ce-44e5-bdb6-3ba0c4cebf11/upload_pdf/B12BM290.pdf;fileType=application%2Fpdf

¹¹ <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F17882b8a-dc1d-4551-8f35-099917c16db8%2F0095%22>

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F17882b8a-dc1d-4551-8f35-099917c16db8%2F0182%22>

¹² <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F17882b8a-dc1d-4551-8f35-099917c16db8%2F0183%22>

¹³ <http://theconversation.edu.au/bill-to-stop-misuse-of-dangerous-technology-could-hit-uni-research-5980>

<http://www.smh.com.au/opinion/political-news/defence-red-tape-bill-to-hit-research-say-uni-chiefs-20120321-1vkb9.html>

¹⁴ <http://www.theaustralian.com.au/national-affairs/smith-eye-on-wider-nuke-veto/story-fn59niix-1226460252584>

<http://www.crikey.com.au/2012/08/17/defence-under-the-gun-for-proposed-academic-censorship/>

¹⁵ <http://www.smh.com.au/opinion/politics/tighter-defence-ties-will-bind-academics-and-stifle-innovation-20121009-27b4n.html#ixzz28zZ8GkqR>

¹⁶ <http://theconversation.edu.au/science-and-the-slammer-the-consequences-of-australias-new-export-control-regime-10127>

implications for the nature of your academic research or the future of Australian intellectual and scientific inquiry.

It is also critical to call for the NTEU to be a part of the consultation and trial processes that will be established as part of the transitional arrangements after passage of the Bill.

The following further messages are important from a Union perspective:

- We understand and agree that certain kinds of research may require oversight by the Defence Department where it is likely to be used for criminal purposes adverse to national security interests;
- The Bill requires substantial redrafting to incorporate the proposed amendments and concerns of the university and research community;
- We would have preferred proper engagement with the sector and this did not happen;
- We are concerned about the fact that there is not a public debate about the implications of the legislation upon freedom of intellectual inquiry;
- We are concerned with the scope of research impacted by the proposed legislation and are interested in ensuring that as few academics are impacted by the legislation as possible;
- We do not want Australia to be disadvantaged in terms of capacity for scientific research compared to any other nation;
- We are concerned about the introduction of a 'publication' offence;
- In the short-term we want the recommendations made by the Senate Committee and the Chief Scientist's roundtables incorporated into the Bill's amendments, and the NTEU is included on the Steering Committee.

¹⁷ <http://www.nteu.org.au/article/Undue-haste-on-Defence-Trade-Controls-Bill-could-damage-Australian-research--13473>
<http://www.nteu.org.au/article/NTEU-sets-out-concerns-on-the-proposed-Defence-Trade-Controls-Bill-13498>