



Duncan Ivison
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Dr Vivienne Thom AO
Independent Review of the Defence Trade Controls Act 2012 (Cth)
DTC Act Review Secretariat
R1-3-A003B
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CANBERRA BC ACT 2600

By email: dtcact.review@defence.gov.au

Dear Dr Thom,

The University of Sydney welcomes the statutory review of the operation the Defence Trade Act 2012 (Cth) as amended in 2015 ('the Act') and appreciates the opportunity to provide feedback on issues covered by the review's terms of reference.

From 2012 to 2015 the University of Sydney worked closely with the Department of Defence, the Chief Scientist, Chief Defence Scientist, the Chief Executive of the Australian Research Council, other universities, public and private research organisations and other stakeholders on implementation of the Act to:

- review the impact of the legislation on research activities in Australia;
- establish a publication review which resulted in publications of *Defence and Strategic Goods List 1996 (DSGL) Part 2 Dual-Use Goods & Technology Research* without a permit (unless a military end-use is specified in the publication); and
- effect suspension of the offence provisions for an implementation period.

Those initiatives, along with the inclusion of review provision in section 74B of the Act were the result of a fruitful collaboration between stakeholders and the Government and we are pleased to participate in this review to help ensure the Act is an effective component of Australia's national security laws, which does not unnecessarily restrict trade, research and international collaboration.

Our comments in response to the questions raised by the review are as follows.

Whether the Act is fit for purpose

The University views the Act as currently providing sufficient controls to prevent the intangible supply or publication of DSGL technology and brokering of DSGL goods and DSGL technology to stem the proliferation of military and dual-use goods and technologies.

Whether there are any gaps in the Act's controls

In the course of applying the provisions of the Act, we have not identified any gaps in the technology specified in the Defence and Strategic Goods List. As we have discussed with Defence Export Controls (DEC) on a number of occasions, we believe that some of the controls in Part 2 of the DSGL lack clarity, while some controls exceed the parameters and characteristics intended to be controlled.

Those specific controls could be narrowed or brought up to date with developments in technology and we would be happy to provide further details and examples as required.

Whether any unintended consequences are resulting from the Act's controls

In the range of research projects we have reviewed thus far in the context of applying for an assessment or seeking a permit, we have not observed any unintended consequences resulting from the Act's controls. We do note the cost of compliance and certain anti-competitive effects, which we discuss in the paragraph below.

Any other matters considered relevant.

Industry, university and other research consultation group

The University suggests that the Government consider incorporating a provision in the Act, which provides for a structured and continuing communication between the Government and representative experts from the industry, university and wider not-for-profit research sectors required to comply with the legislation. We recommend that the review consider re-establishing a group similar to the Strengthened Export Controls Steering Group, which was established in 2012 to advise and assist the Department of Defence on practical implementation issues during the transition period.

While the purpose of the reviews conducted under s74B of the Act allows parties to discuss issues regarding implementation and operation of the legislation, reconstituting such a group would provide a valuable ongoing forum for consultation on the impact of the Act and for the ongoing identification and resolution of administrative issues.

Section 74B

Technological developments in areas that are the subject of controls are fast changing, as is the geopolitical climate. In this environment we feel that the five-year period mandated for subsequent reviews is too long. The University would like to see this period reduced to three years.

Considerable cost of implementation in a research-intensive university

The University of Sydney has several thousand researchers who are employees, visitors, affiliates or higher degree by research students and we conduct a wide range of research across many disciplines.

Although the University has so far only found it necessary to apply for a limited number of permits, we have had to devote considerable resources to working with specific researchers (subject matter experts) to decide whether the goods or technology involved should be assessed by DEC as controlled technology, or that an application for a permit should be made.

The impact of the compliance obligation the Act and other national security legislation (Autonomous Sanctions and United Nations etc) imposes remains considerable and is certainly greater than the burden placed on corporations and other organisations with narrower and less distributed research activities. This places the University at a significant competitive disadvantage as we are required to devote far greater resources to Defence Trade Controls and other national security education, intra-Faculty systems, assessment and compliance.

While we do not have precise estimates of the total time and financial costs the University incurs annually complying with the Act's requirements, at least eight legal and administrative staff are involved on a weekly basis. Compliance also requires the investment of significant time by the researchers and Faculty support staff reviewing activities against the DSGI and the Act's export control requirements. Of course, whenever researchers and other staff must dedicate their time to legislative compliance there are opportunity costs. It is therefore critical that the legislation and supporting administrative processes are proportionate to the risks involved and as simple, streamlined and efficient as possible.



The greater resources and efforts which this University and similarly-sized research-intensive universities devote to compliance is supported by the considerable assistance which DEC staff provide. We cannot speak highly enough of the support DEC officers provide through this process.

Development of the Online DSGL Tool

The University appreciates the Department's efforts developing guidance materials, which have proved to be most useful for our compliance staff and academics dealing with the export controls regime. The development of the Online DSGL Tool has also been a welcome initiative. The Tool is a helpful starting point for our staff. It also serves as a useful cross-check at the end of our review of a specific research activity. For example, the Tool provides greater ease of use by providing the General Technology Note and the General Software Note immediately adjacent to the relevant items.

The University believes that the Tool could be developed further to make it even more useful and we would be happy to make suggestions, although that is outside the scope of this review.

I would be pleased to host you for a campus visit to meet with staff responsible for our compliance, education and training activities relating to the Defence Trade Controls Act and other national security laws. We would also be happy to arrange for you to meet with some of our academic staff and affiliates who have first-hand experience dealing with Australia's and other nations' export control regimes covering the intangible supply, publication and brokering of defence and strategic goods and technology.

We look forward to engaging with you and the review team over the coming months.

Yours sincerely,

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Professor Duncan Ivison
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