

SUBMISSION TO THE CONSULTATION ON THE EXPOSURE DRAFT – SECURITY LEGISLATION AMENDMENT (CRITICAL INFRASTRUCTURE) BILL 2020

November 2020

Universities Australia welcomes the opportunity to make a submission to the consultation on the exposure draft of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*.

Universities Australia is the peak body for Australia's 39 comprehensive universities. Our members are spread across Australia, in both regional and metropolitan areas. They educate more than a million students each year and undertake research that both underpins and drives innovation in the economy.

Universities have a long history of working effectively with Government agencies on security matters. This includes collaborating as partners with the Federal Government on the University Foreign Interference Taskforce to develop and implement the *Guidelines to counter foreign interference in the Australian university sector*. Australian universities recognise they are a key element in ensuring Australia's prosperity, social cohesion and security.

This submission outlines some of the issues raised by the exposure draft and accompanying explanatory document. However, the recommendations, key principles and issues outlined in our September submission remain largely pertinent, and Universities Australia commends that submission to the Department.

RECOMMENDATIONS

Universities Australia recommends that:

1. Government consult in greater detail with the university sector before introducing the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (the Bill) to Parliament. A sector-wide working group would be an appropriate mechanism.
2. The legislation, as it applies to the university sector, should be proportionate and workable, risk-based and carefully targeted.
3. Government should develop a robust regulatory impact statement prior to the introduction of the bill to Parliament.
4. Government should work with the university sector in developing an implementation timeframe that matches the maturity of the sector and takes into account the level of financial investment.
5. Government consider better coordination across Commonwealth departments and agencies on national security and associate matters in the university sector, to ensure a coherent, cohesive and efficient approach.

KEY POINTS

Details of the legislation

Many of the details that will apply to the university sector are absent from the legislation. Universities Australia welcomes the comments in the explanatory document to the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* acknowledging the “complex, multi-layered and multi-functional nature of universities” and the invitation to work with the Department of Home Affairs during the co-design period.¹ It will be important that time and expertise are applied to ensuring the details of the legislation are fit for purpose and can remain relevant for a reasonable period of time.

However, Universities Australia is concerned that leaving a range of very significant matters to the rules, with little guidance as to rule making and determination in the primary legislation, does not support certainty. The wide-ranging nature of the legislation, the significant powers that it provides to Government, and the complex and costly burdens it has the potential to impose on a number of industry sectors - including universities - means that the details of the legislation are more appropriately contained in the primary legislation.

This legislation also has the potential to constrain academic freedom, a foundation principle for universities and Government, through provisions that could impose restrictions on projects and personnel.

Therefore, Universities Australia strongly recommends that Government take the time to develop the details of the legislation before introducing the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (the Bill) to Parliament.

Universities Australia would be pleased to work with Government on these details, to ensure that the legislation, as it applies to the university sector, is proportionate and workable, risk-based and carefully targeted.

Impact of the legislation

Universities Australia acknowledges that a regulatory impact statement will be released when the Bill is introduced to Parliament. We also acknowledge the intent to produce regulatory impact statements as the details are developed in a co-design process with affected sectors.

However, as the yet to be developed details will determine the scale of the impact of the legislation, the regulatory impact statement will not be able to effectively capture the full impact.

Therefore, Universities Australia recommends that Government develop a robust regulatory impact statement after more detail has been developed, and prior to the introduction of the Bill to Parliament.

Universities Australia is concerned that the resource implications for universities have the potential to be considerable. Government should give due consideration to supporting universities to meet obligations arising from the legislation, particularly where university assets are declared as within a System of National Significance.

The enhanced cyber security obligations, and the capacity for Government agencies to reach into external systems raises issues of organisational integrity and autonomy. More information on what type of event might cause such a power to be invoked is required.

Universities Australia would welcome the inclusion of a mechanism for independent review of the operation of the legislation, and would be pleased to discuss the form this mechanism might take.

¹ Security Legislation Amendment (Critical Infrastructure) Bill 2020 Explanatory Document, p27

Given universities are also integral to some aspects of the health sector, clarity on whether universities will be captured by the rules in more than one sector would be welcome.

Universities Australia has some concerns about unintended consequences for collaborations with industry. The amendments propose that, where Government funding is received for research performed by a company, that company would be subject to the provisions of the Act. Given the compliance obligations this would bring, it may act as both a disincentive to industry to perform nationally important research and development, and impact on potential collaborations between universities and industry partners.

The Government has an enduring interest in stronger links between industry and universities. This is recently demonstrated by policy decisions such as the commercialisation focus of the Minister for Education's \$5.8 million scoping project (advised by an expert panel comprising business and university leaders), the shifting of \$30 million from the Australian Research Council's Discovery Program into the Linkage Program (contained in the 2020-2021 Federal Budget) and the establishment of the National Priorities and Industry Linkage Fund (as part of the Job Ready Graduates Package).

Universities have shown the benefits of deep industry collaboration. Such partnerships deliver a return of \$4.50 to business for every dollar invested in collaboration with a university.² Care needs to be taken that valuable collaborations are not discouraged by this legislation.

Timeframes

Universities Australia understands from the consultation presentation by the Department of Home Affairs that Government aims to introduce the legislation to Parliament in 2020, and complete the co-design of details with sectors by mid-2021. This is an ambitious timeframe, and will place considerable expectations on both the Department and sectors affected. It would be preferable to ensure that sufficient time is available to co-design the details, so that the legislation is fit for purpose for a reasonable period of time.

Universities Australia recommends that Government work with the university sector in developing an implementation timeframe that matches the maturity of the sector and takes into account the level of financial investment.

Coordination across Government

The explanatory document also suggests that the Department of Home Affairs "may be best placed to regulate compliance with any Positive Security Obligation for the education and research sector. If determined necessary, the Department of Home Affairs will work with government and industry stakeholders to develop sector-specific Positive Security Obligation and associated guidance."³

A number of Government departments and agencies are currently proposing legislation, or changes in oversight, or regulatory practices, in various aspects of national security and national interest. Combined, these potentially create overlapping regulatory and oversight regimes in the sector. This regulatory burden risks diverting increasing amounts of scarce resource from the core business of universities – teaching and research.

Universities Australia recommends better coordination across Commonwealth departments and agencies on national security and associated matters in the university sector, to ensure a coherent, cohesive and efficient approach.

² Universities Australia (2017), *Clever collaborations – the strong business case for partnering with universities*, Canberra. <https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/06/Clever-Collaborations-FINAL.pdf>

³ *Ibid*, p28

Potential impacts on the sector

While it is difficult to outline potential consequences with so little detail available, there are important broad points.

Universities, their research, their academic standards, and their relationships, are subject to a wide range of Government regulation. Any additional regulation should, at a minimum, not duplicate or conflict with existing rules. Any new regulation should also be very carefully targeted at policy intent and have regard to universities standing as autonomous, self-accrediting institutions.

CONCLUSION

Universities Australia strongly advocates for thorough consultation and development of detailed legislation prior to the amendments being introduced to Parliament.