

SUBMISSION TO EXPOSURE DRAFT SECURITY LEGISLATION AMENDMENT (CRITICAL INFRASTRUCTURE PROTECTION) BILL 2022

1 February 2022

Universities Australia (UA) welcomes the opportunity to make a submission to the Department of Home Affairs on the Exposure Draft Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022 (the SLACIP Bill).

UA is the peak body for Australia's 39 comprehensive universities. Our member universities are spread across Australia in both regional and metropolitan areas. They educate more than a million students each year, undertake all of the university research in Australia and engage globally to add to this country's stock of knowledge, as well as Australia's economic and social wellbeing.

RECOMMENDATIONS

Universities Australia recommends that:

- the Government formally recognise the University Foreign Interference Taskforce (UFIT) as meeting the Risk Management Program obligation;
- the Government closely consult with UA and the sector to appropriately quantify the regulatory impact of the Bill and the current Act; and
- the Government continue to work with UA on any further refinement of the definition of a 'critical infrastructure asset' and 'higher education and research sector' with respect to universities.

The university sector continues to strengthen its partnership with Government through its productive collaboration on the University Foreign Interference Taskforce (UFIT). The UFIT Steering Group comprises an equal number of senior representatives from universities and from a number of Government departments and agencies.

The Steering Group has developed and updated Guidelines to Counter Foreign Interference in the Australian University Sector (the Guidelines) as well as providing a valuable forum for exchange of information and discussion of key issues affecting Australia.

Universities are actively working on the implementation of the Guidelines, which were updated in the second half of 2021. These updated Guidelines have a strong focus on risk identification and risk management. This strong focus on identifying and managing risks also provides an assurance mechanism for the sector and Government.

Current and former Ministers for Education and Youth, and for Home Affairs, have recognised the work of the University Foreign Interference Taskforce. UA appreciates this recognition and recent statements made by the Department; specifically that, in keeping with the Bill's intent to recognise existing mechanisms, UFIT will be recognised as meeting the requirements of the Risk Management Program.

UA would also like to recognise the efforts made by Government to amend the definition of the higher education and research critical infrastructure sector to narrow the scope, so as to allow better targeting of critical assets. UA is also encouraged by the inbuilt consultation mechanisms in the Bill.

UA would like to note the following specific points in relation to the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022.

Further refinement of the definition

1. University members are generally comfortable with the form of the definition but note that work still remains in identifying the relevant entities captured by the new sector definition.

One view raised by members notes that subclause (a) in particular

“supported financially (in whole or in part) by the Commonwealth”

arguably brings into scope all infrastructure owned and operated by universities in receipt of Commonwealth funding and is therefore considered far too broad in its application.

The elements of the definition set out in proposed subclause (b) would serve to focus the Bill's scope on those higher education infrastructure assets (e.g. National Collaborative Research Infrastructure Strategy (NCRIS) facilities and Defence-funded facilities) which, if compromised, could potentially pose a legitimate threat to national security.

Given the importance of this definition, UA appreciates the opportunity to work further with Government and our members to explore further options for this definition.

2. Further clarification is sought on how industry research partners for universities are treated under the Bill; specifically, whether industry that engages with universities is included and where responsibility lies. UA's current understanding is that industry, in this case, may be treated as a part of the supply chain for the university research. Again, UA would be pleased to continue working with Government on this clarification.

Implementation cost

3. These reforms will have a financial impact. UA is pleased to note the recognition of cost as a consideration by the Minister in making Rules.

UA is keen to ensure that the real costs of implementation of the reforms are understood and agreed. In the recently released critical technologies blueprint and action plan, the implementation of the UFIT Guidelines was considered to be low cost to universities. UA strongly disagrees with this characterisation. Universities fully understand the critical importance of their role in infrastructure protection but the additional costs to institutions are compounded by several other marginal cost increases in other areas.

Based on the 18 January 2022 Town Hall meeting, UA understands that the Government is undertaking a regulatory impact statement (RIS). As per the usual practice, UA seeks to be consulted on the RIS in relation to the impact of the Bill on the university sector.

Cybersecurity related aspects

4. Materiality in relation to the 'relevant impact' definition should be further clarified to assist in implementation, including avoiding unnecessary reporting.
5. The Bill speaks extensively on requirements regarding data infrastructure and processing, but further clarification will be required on how to deal with data as a critical infrastructure asset in itself.
6. It is unclear as to how the Bill applies to cloud services. Further clarification will be required.
7. It was raised by some UA members that the proposed reporting and turn around period of 28 days with respect to cyber security incidents is too short, particularly if comprehensive information is to be gathered, assessed and synthesised. UA would like to work with Government to understand how cyber incident reporting requirements within existing contracts, arrangements and understandings between universities and Government departments or agencies interact with the reporting proposed in this Bill.
8. Should any part of a university be declared a System of National Significance, further guidance on the impacts of a declaration on the university will be necessary, including resources and templates to assist in meeting the enhanced obligations.

CONCLUSION

UA thanks the Government for taking on board feedback to date relating to the definition of critical infrastructure of the sector and for recognising and valuing the work being undertaken under the auspices of UFIT to identify and manage risk.

UA seeks formal recognition from the Government that the activities in universities driven by UFIT meet the required obligations under the Risk Management Program.

UA looks forward to continuing work with the Government to provide constructive input into its deliberations regarding critical infrastructure, in particular pertaining to the regulatory impact and any further scoping of the definition of a critical infrastructure asset with respect to universities.